THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

July 7, 1989

Mr. Gary W. Smith
City Attorney
P. O. Box 1967
Texarkana, Texas 75504

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 6111; this decision is OR89-190.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The City of Texarkana received a request for a copy of a list of persons who have applied for assistance under the city's Department of Housing and Urban Development (HUD) sponsored housing rehabilitation program. You advise that the federal regulation regarding disclosure of this information, entitled "public program access to program records," is found at section 570.508 of Title 24 of the Code of Federal Regulations. This regulation provides:

> Notwithstanding 24 CFR 85.42(f), recipients shall provide citizens with reasonable access to records regarding the past use of [Community Development Block Grant] funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.

Section 85.42(f) of Title 24 of the Code of Federal Regulations does not require public access to records concerning the general financial and program records of state and local governments receiving grants and awards from the Department of Housing and Urban Development. Section

570.508, however, applies specifically to public access to Community Development Block Grant (CDBG) records maintained by state and local governments. By its express terms section 570.508 governs the information at issue and the resolution of this request lies in the interpretation of state law.

You contend that the information relating to the CDBG funds, specifically the names and addresses of persons applying for these funds, is protected from required disclosure by section 3(a)(1) of the Texas Open Records Act. Section 3(a)(1) protects from disclosure "information deemed confidential" by constitutional or common-law privacy. Information is protected by constitutional privacy if it falls within one of the traditional "zones of privacy." Roe v. Wade 410 U.S. 113 (1973). Information is protected by common-law privacy if it contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977).

The names of persons who have received public assistance under the city's housing rehabilitation program are not protected by constitutional law. The constitutional "zones of privacy" include information that relates to marriage, procreation, contraception, family relationships, and child rearing and education. Paul v. Davis, 424 U.S. 693, 713 (1976). The information at issue does not fall within one of the protected categories described by the United States Supreme Court.

The attorney general has previously determined that the names of persons who have applied for a federally funded loan and/or grant for housing rehabilitation are not protected by common-law privacy, see Open Records Decision No. 373 (1983); nor are the names and addresses of persons who formerly occupied subsidized housing. Open Records Decision No. 318 (1982); cf. Open Records Decision No. 9 (1973) (names of persons applying for certain public welfare funds specifically made confidential by statute). Regarding the information at issue, you argue "such disclosure may violate common-law privacy by allowing intrusion into the applicant's physical solitude or seclusion. Further, disclosure of the names and addresses of the applicants could result in the exposure of the applicants to publicity which would bring to light or allow assumptions of potentially embarrassing facts about the applicants' private lives." While your argument may be reasonable, however "private" such information may seem initially, it does not

meet the standard required by the Industrial Foundation case.

The attorney general has held that the Supreme Court's standard for common-law privacy requires the disclosure of, among other things, the home address of public employees, Open Records Decision No. 169 (1977) and the names and addresses of disabled persons eligible for service by a city's special transit system, Open Records Decision No. 475 (1987). No intimate or embarrassing information about a person is revealed when the person is identified as an applicant for public housing assistance. Absent special circumstances, no legal authority makes confidential the names and addresses of these individuals.

Please note, however, that specific financial information regarding benefits received from federal programs is protected from disclosure by common-law privacy. Open Records Decision No. 373; see Hecht v. Pro-Football, Inc., 46 F.R.D. 605 (D.D.C. 1969). Although the public has some interest in knowing whether public funds received by local and state governments and expended in such grants are being distributed to qualified applicants, such interest does not warrant disclosure of an applicant's financial status. Open Records Decision No. 373.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-190.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
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DAD/FAF/bc

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