



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 20, 1995

Ms. Mitzi Cotton  
Assistant City Attorney  
Law Department  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

OR95-1548

Dear Ms. Cotton:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 36724.

The City of Austin (the "city") received a request for "all files in the residential programs ([Appliance Efficiency Program], Whole House, and Loan) for the last 2 fiscal years." The city contends that the portions of the files that reflect an individual's address, telephone number, or social security number must be withheld from disclosure pursuant to section 552.101 of the Government Code since the information is confidential pursuant to V.T.C.S. art. 1446, § 2. The city argues that this information is confidential only if the individual has properly requested that the government-operated utility keep this information confidential. We assume that you have released the remaining requested information to the requestor. The city has submitted for our review representative samples of the information requested marked to reflect the portions of the documents that it seeks to withhold.<sup>1</sup> The information the city submits for our review is a copy of a computer printout titled "Whole House Rebate Program Bid Summary Inquiry."

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Additionally, you have submitted a copy of an individual's completed Right of Confidentiality of Personal Information form that reflects that it was returned to the City of Austin Utilities.

Section 552.101 excepts from required public disclosure information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. The city claims that the following confidentiality statute applies to the facts in this instance. The confidentiality statute urged by the city provides in part the following:

[A] government-operated utility may not disclose personal information in a customer's account records if the customer requests that the government-operated utility keep the information confidential. The customer may request confidentiality by delivering to the government-operated utility an appropriately marked form . . . or any other written request for confidentiality. The customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information.

V.T.C.S. art. 1446h, § 2. "Personal Information" is defined as "an individual's address, telephone number, or social security number." V.T.C.S. art. 1446h, § 1(2). You state that the requested records relate to energy conservation programs that are available on a voluntary basis only to residential city electric utility customers. You also state that the programs are implemented on the city's electric utility's behalf by the Environmental and Conservation Services Department (the "ECSD") of the city. Additionally, you state that the programs are funded totally by the city's electric utility.

The requestor submitted for our review the ECSD's application for the Appliance Efficiency Program Request For Rebate Payment, the rebate program schedule, and a general explanation of the program published by the ECSD. These materials are related to one of the programs about which the requestor seeks information. This program, and we assume the other two programs about which the requestor seeks information, are offered and managed by the ECSD.

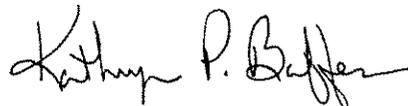
In reviewing these documents, we note that the ECSD gathers personal information from individuals seeking a rebate payment under the Appliance Efficiency Program. The ECSD does not use the personal information submitted by individual customers to a government-operated utility that is compiled and maintained by that utility in connection with the customer's utility service account. Rather ECSD solicits personal information directly from the utility customer that is seeking a rebate for purchasing energy efficient appliances. We conclude that the confidentiality provision of article 1146h, section 2, is inapplicable to the personal information submitted by individuals applying for special rebate payments that the ECSD has collected and maintained

independently of the utility customer's account to administer the rebate programs. In this instance, the requestor is not seeking personal information from a government-operated utility as described in article 1146h, section 2. Consequently, you may not withhold the personal information collected by ECSD for its rebate programs pursuant to section 552.101 of the Government Code in conjunction with article 1146h, section 2.

The submitted representative sample of information includes the social security number of the individual applying for a rebate under the Appliance Efficiency Program. A social security number may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information that you have provided, we are unable to determine whether the social security numbers at issue here are confidential under federal law.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes  
Assistant Attorney General  
Open Records Division

KPB/rho

Ref: ID# 36724

Enclosures: Submitted documents

cc: Mr. Paul Robbins  
311-A Leland  
Austin, Texas 78704  
(w/o enclosures)