Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. Charles D. Olson
Haley & Davis, P.C.
Bank One Plaza, Suite 600
510 North Valley Mills Drive
Waco, Texas 76710

OR96-0119

Dear Mr. Olson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code.[1] Your request was assigned ID# 28929.

The Housing Authority of the City of Killeen (the "housing authority") received a request for information relating to financial settlements made by the Texas Municipal League to a former housing authority employee and a former housing authority resident. You contend that the requested information is excepted under section 552.101 of the Government Code. However, you have not submitted the requested information to this office for review. *See* Gov't Code § 552.303 (governmental body must submit specific information requested to attorney general).

You state that the housing authority operates under the direction and supervision of the United States Department of Housing and Urban Development ("HUD"). We note that the requestor did make this request for information under the Texas open records laws and the federal Freedom of Information Act. You further state that the housing authority has been directed by HUD not to submit the requested information to this office for review as the information is confidential under federal law.

[1]We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142. A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.* The request at issue was made prior to September 1, 1995.

Without the documents, your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exception you raised. The fact that information held by a federal agency is excepted by the Freedom of Information Act does not necessarily mean that the same information is excepted under Texas open records laws when held by a Texas agency. Open Records Decision No. 124 (1976). Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code and that the information is presumed to be public. Open Records Decision No. 195 (1978).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information.[2] Open Records Decision No. 195 (1978); *see also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,

Loretta DeHay

Loretta DeHay
Assistant Attorney General
Open Records Division

LRD/LBC/ch

Ref: ID# 28929

cc: Jen Sansbury, Reporter
Killeen Daily Herald
P.O. Box 1300
Killeen, Texas 76540

Mr. John E. Wright
Director of the Fair Housing Centers for the Southwest Area
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
P.O. Box 2905
Fort Worth, Texas 76113-2905

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[2]We are not aware of any Texas laws that make the requested information confidential, nor do you raise any such laws. We note, however, that section 3610(b)(4) of title 42 of the United States Code provides that "[E]ach conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this subchapter." Although we can make no determination as to the confidentiality of the requested information under federal law without reviewing the documents, it appears that the actual conciliation agreement is public, and only information concerning things "said or done in the course of conciliation" are confidential under federal law. 42 U.S.C. § 3610(d)(1).