



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 21, 1997

Mr. Fabian Guerrero
Attorney at Law
P.O. Box 4001
Edinburg, Texas 78540-4001

OR97-1178

Dear Mr. Guerrero:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106094.

The City of Elsa (the "city"), which you represent, received a request for five categories of information including the following:

1. A copy of each application submitted to the city of Elsa for home rehabilitation which was considered in 1996 under the Urban County program.
2. A copy of the completed forms that were used for each application that shows the points that were given to each applicant.¹

You contend that portions of the information responsive to items 1 and 2 of the request are excepted from disclosure under section 552.101 of the Government Code in conjunction with the right to privacy. You have submitted a representative sample of the information at issue to this office for review.²

¹Because you have not raised arguments against disclosing the information requested in items 3-5 of the request, we assume that the city has already released this information to the requestor.

²We 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). 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.

Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

You did not request a decision from this office within ten days after the city received the request for information. Therefore, the information at issue is presumed to be public. However, you contend that the information is confidential by law. As the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your section 552.101 arguments against disclosure.

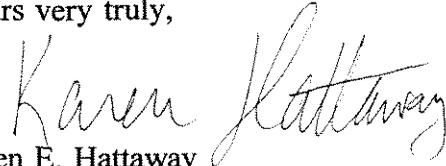
Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

The information that you contend is excepted from disclosure consists of the background personal and financial information of applicants for a housing rehabilitation program. We agree that most of this information is highly intimate and embarrassing and of no legitimate public interest. Open Records Decision Nos. 523 (1989) (background financial information included in loan file of participant in Veterans Land Program protected by common-law privacy), 373 (1983) (financial information relating to applicant for housing rehabilitation grant protected by common-law privacy). This information, which we have marked accordingly, is protected by the common-law right to privacy. The city must, therefore, withhold the marked information from disclosure under section 552.101 of the Government Code. Of course, the city must release the unmarked information to the requestor.

We are resolving this matter with an 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 should not be relied upon as a previous

determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 106094

Enclosures: Submitted documents

cc: Mr. Arcadio Padilla Jr.
P.O. Box 1083
Elsa, Texas 78543
(w/o enclosures)

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