



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1998

Mr. Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

OR98-1805

Dear Mr. Hutchings:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117116.

The Office of Consumer Credit Commissioner (the "OCCC") received a request for certified copies of any documents concerning the Eveready Loan Corporation. You assert that three credit reports are excepted from public disclosure based on section 552.101 of the Government Code in conjunction with the common-law right to privacy. You assert that two other documents are excepted from disclosure based on sections 552.111 and 552.112 of the Government Code.

552.101 protects from required public disclosure information made confidential by the common-law right to privacy. See *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). However, here we need not consider whether the consumer reports at issue meet the common-law privacy test because another statute in the Open Records Act grants the requestor access to the reports.

Section 552.023 of the Government Code reads in pertinent part as follows:

- (a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

This provision prevents a governmental body from asserting an individual's own privacy as a reason for withholding records from that individual. *See* Open Records Decision No. 481 (1987). In this instance, we believe the requestor is the "authorized representative" of the three individuals who are the subject of the reports. Thus, the OCCC may not withhold the reports from the requestor based on the common-law right to privacy.

Section 552.111 protects from disclosure

[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* We agree that section 552.111 protects from disclosure portions of the two documents at issue. However, we do not believe the information section 552.111 does not cover is excepted from disclosure by section 552.112. Section 552.112 excepts from required public disclosure "information contained in or related to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both." *See* Open Records Decision Nos. 392 (1983), 194 (1978). We have marked the documents accordingly.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref.: ID# 117116

Enclosures: Marked documents

cc: Ms. Mae De la Rosa
Legal Assistant
Carrie, Cramer & Weatherbie
5956 Sherry Lane, Suite 1204
Dallas, Texas 75225
(w/o enclosures)