OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 11, 2003

Ms. Myra Mollica
City Secretary
City of Shepherd
P.O. Box 248
Shepherd, Texas 77371

OR2003-4026

Dear Ms. Mollica:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182625.

The City of Shepherd (the "city") received a request for information regarding individuals requesting grant funding under the Owner-Occupied Housing Assistance component of the HOME Program administered by the Texas Department of Housing & Community Affairs. You state that the requestor clarified the request to include names, records of income, and other information detailing the manner of qualification for applicants to the program. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body); *see also* Open Records Decision No. 663 at 5 (1999) (discussing requests for clarification). You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

We must address the city's obligations under section 552.301 of the Government Code. Under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You have submitted blank copies of the City of Shepherd 2001 HOME Program Application and 2001 HOME Applicant Rating forms for our review. You have also submitted a blank form document entitled "HOME Applicants sorted by 30% Income Bracket / Total Score,"

with all data about applicants redacted. The blank form documents do not contain information about individual applicants to the HOME Program, and therefore are not sufficient to satisfy the requirement that the city provide a copy or representative sample of the specific information requested. *See* Gov't Code § 552.301(e)(4); Open Records Decision Nos. 499 (1988), 497 (1988) (governmental body receiving request for voluminous or repetitive records may submit representative samples of requested information, provided that if responsive information contains substantially different types of information, submitted sample includes all information). Because you have not submitted the information at issue, we determine that the city has not complied with section 552.301(e) in making this request for a decision from this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that its disclosure affects third party interests. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim that the information at issue is excepted from disclosure under section 552.101 of the Government Code as information made confidential by law.[1] However, because you have not submitted any responsive information for our review, we have no basis for finding that the information is confidential. We therefore conclude that the city must release the information at issue to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.*

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[1]Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

§ 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 182625

Enc: Submitted documents

c: Ms. Ruby Shrader
21 Red Bud Lane
Shepherd, Texas 77371
(w/o enclosures)