



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2010

Mr. James G. Nolan
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2010-17218

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 398427 (Comptroller ID#6538782459).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for several categories of information regarding the Texas Trade Up Appliance Rebate Program ("Rebate Program").¹ You state you will release some of the responsive information to the requestor. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample information.²

¹We note that the comptroller sought and received received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other law, such as section 600.153(f) of title 10 of the Code of Federal Regulations.³ Section 600.153(f) provides in relevant part:

(f) Unless required by statute, [the Department of Energy (the “DOE”)] shall place no restrictions on recipients [of grants] that limit public access to the records of recipients that are pertinent to an award, except when DOE can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to DOE.

10 C.F.R. § 600.153(f). You provide our office with a memorandum issued by the DOE on April 22, 2010, in reference to “State Energy Efficient Appliance Rebate Program Disclosures,” which provides guidance regarding privacy issues related to the Rebate Program. *See* Memorandum from Roland Risser, Program Manager, U.S. Dep’t of Energy, to Ashley Harden, Gen. Counsel, Tex. Comptroller of Pub. Accounts (Apr. 22, 2010)(on file with the Texas Comptroller of Public Accounts). According to the DOE, the memorandum was written in anticipation of public information requests regarding the Rebate Program. *Id.* In its memorandum, the DOE quotes section 600.153(f) and further states it would be legally required “pursuant to 5 U.S.C. 552(b)(6), of the Freedom of Information Act, to keep confidential all personal privacy information contained in an individual’s application for an appliance rebate under the [Rebate] Program[.]” *Id.* Thus, the DOE concludes it is requiring “all states extend that same protection to their client’s records for their State appliance rebate program.” *Id.* Based on your representations and our review of the DOE memorandum and the submitted documents, we conclude the comptroller must withhold the submitted names, home addresses, telephone numbers, and e-mail addresses of individuals participating in the Rebate Program, which you have highlighted, under section 552.101 in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations.⁴

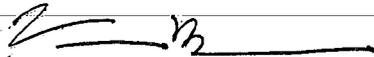
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

³We note that an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

⁴As our ruling is dispositive, we need not address the remaining argument against disclosure.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 398427

Enc. Submitted documents

c: Requestor
(w/o enclosures)