



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

March 4, 1991

Mr. Larry E. Kosta
Executive Director
Texas Department of Licensing and Regulation
P. O. Box 12157
Austin, Texas 78711

OR91-119

Dear Mr. Kosta:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. We interpret your request as being made pursuant to section 7(a) of the act; your request was assigned ID# 11675.

The Texas Department of Licensing and Regulation (the department) received an open records request for "all your log sheets of complaints and HUD violations that you have received from all consumers or claimants" against a named retailer and a named manufacturer of mobile homes. You contend that this information comes under the protection of sections 3(a)(1), 3(a)(3), and 3(a)(4) of the Open Records Act.

We note initially that the department received the request for information on January 29, 1991 and that you requested a decision from this office on February 11, 1991. Consequently, you failed to request a decision within the ten days required by section 7(a) of the act.

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for the information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. City of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d 316, 323-324 (Tex. App. -- Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Hancock v. State Board of Insurance, 797 S.W.2d 379 (Tex. App. -- Austin 1990, n.w.h) and authorities cited therein. You have not shown compelling reasons why the information at issue should

be withheld pursuant to sections 3(a)(3) or 3(a)(4); consequently, you have waived the protection of these two exceptions.

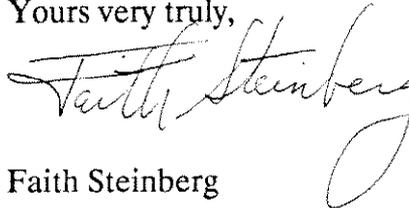
A demonstration that information comes under the protection of section 3(a)(1), which protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," would constitute a compelling reason for withholding information because the release of confidential information could impair the rights of third parties and because the improper release of this type of information constitutes a misdemeanor. See V.T.C.S. art. 6252-17a, § 10(e).

You contend that sections 14 and 17(c) of article 5221f, V.T.C.S. may "supersede" the Open Records Act and require that the requested information not be released "until the administrative process has run its course." Section 14 lays out the general procedure by which complaints regarding mobile home warranties must be remedied. Section 17(c) provides remedies and penalties in instances where mobile home manufacturers, installers, and retailers fail to perform warranty obligations. Neither of the sections that you cite contain confidentiality provisions for the type of information at issue here, nor is there any other language in those sections that suggests that the requested lists should not be released. The requested information is not made confidential by article 5221f.

Finally, we note that the requested documents do not contain information that implicates the privacy or proprietary interests of third parties. You have not presented compelling reasons for withholding the requested information; consequently, these documents must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-119.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/RWP/lcd

Ref.: ID# 11675

cc: F. Terry Callahan
Attorney
311 West Laurel
San Antonio, Texas 78212-4334

Mr. Will Ehrle
President & General Counsel
Texas Manufactured Housing Association
P. O. Box 14428
Austin, Texas 78761