



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 28, 1995

Mr. Vernon M. Arrell  
Commissioner  
Texas Rehabilitation Commission  
4900 North Lamar Boulevard  
Austin, Texas 78751-2399

OR95-149

Dear Commissioner Arrell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31370.

The Texas Rehabilitation Commission (the "commission") received a request for information under the Open Records Act from Ms. Jean Duafala. Specifically, Ms. Duafala requested "information contained in File# 95-260." You inform us that the commission has released all of the requested information except for "a few lines on one page," which you contend comes under the protection of the informer's privilege as incorporated into section 552.101 of the Government Code. The commission received Ms. Duafala's request on December 23, 1994. You requested an open records decision from this office on January 18, 1995. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) 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 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. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.-Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (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. See *Hancock*, 797 S.W.2d at 381.

A compelling interest may arise when a third-party's interests are at stake. Open Records Decision No. 552 (1990) at 1. However, the informer's privilege is designed to protect the government's interests, and thus, the existence of this privilege by itself does not demonstrate a compelling interest to withhold the information. Furthermore, you have not provided any specific information that would constitute a compelling reason for withholding the identity of the named individuals in this particular instance.<sup>1</sup> Therefore, because you have not presented this office with a compelling reason why the information should be withheld, the commission must release the information at issue at this time.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/RWP/rho

Ref: ID# 31370

Enclosures: Submitted documents

cc: Ms. Jean Duafala  
1642 Park View Drive  
San Angelo, Texas 76904  
(w/o enclosures)

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<sup>1</sup>We note that none of the named individuals are identified as having cooperated with the commission during its investigation of allegations against Ms. Duafala.