



March 23, 1999

Mr. Sealy Hutchings
General Counsel
Office of Consumer Credit Commission
2601 North Lamar Boulevard
Austin, Texas 78705

OR99-0804

Dear Mr. Hutchings:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 123033.

The Office of Consumer Credit Commissioner (the "commissioner") received an open records request for a variety of information pertaining to certain state laws governing usury. You first contend that the commissioner need not respond to certain items in the request because the requestor seeks answers to questions, as opposed to specific documents, or that the response would require the commissioner to conduct legal research.

It is well-established that the Open Records Act does not require a governmental body to prepare new information, such as answers to factual questions, Open Records Decision No. 347 (1982), or to perform legal research, Open Records Decision No. 563 (1990), in response to an open records request. The act applies only to information already transcribed into tangible form. After reviewing the open records request, we agree that the commissioner need not respond to the following request items: 1(b), 1(c), 1(d), 4(c), 5, 6(c), 6(d), 7(c), 7(d), 8(c), 8(d), 8(e), 9(c), 9(d), 10(c), and 10(d).¹

¹We note that you have made no argument for non-disclosure with regard to the following items: 1(e), 2(c), 3(b), 4(b), and 10(b). We therefore assume that the commissioner has released information responsive to these items to the extent that the commissioner possesses such information. Otherwise, any such information must be released at this time.

You seek to withhold the information responsive to the remaining requested items, a representative sample of which you have submitted to this office, pursuant to sections 552.101, 552.106, and 552.111 of the Government Code. Section 552.106 of the Government Code protects drafts and working papers involved in the preparation of proposed legislation. The purpose of the exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body; it protects the internal "deliberative" or policy-making processes of a governmental body. Open Records Decision No. 460 (1987). *See also* Open Records Decision No. 367 (1983) (legislative material prepared by state agency protected by statutory predecessor of section 552.106). Section 552.106 does not except purely factual material; rather, it excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation. *Id.*

The documents you have designated as Attachments B, C, D, E, F, G, H, R, and S do not contain factual information. Rather, they consist solely of drafts of proposed legislation and hand-written notes, bill analyses, and fiscal notes pertaining thereto. After reviewing the documents at issue, we conclude that these documents may be withheld in their entirety pursuant to section 552.106.

You next contend that Attachments I - Q may be withheld from the public pursuant to section 552.111 of the Government Code, which excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. *Id.* If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982).

Many of the records you seek to withhold under section 552.111 appear to consist of drafts of legislation and other draft documents. This office has previously concluded in Open Records Decision No. 559 (1990) that where a document is a genuine preliminary draft that has been released or is intended for release in final form, the draft necessarily represents the advice, opinion, and recommendation of the drafter; release would reveal something of the deliberative process by indicating where additions and deletions were made; therefore, the draft itself, including comments, underlining, deletions, and proofreading marks are excepted by the statutory predecessor of section 552.111. After reviewing Attachments I - Q, we

agree that the commissioner may withhold these documents in their entirety pursuant to section 552.111.

Finally, you seek to withhold portions of Attachment T pursuant to the common-law right of privacy as incorporated into section 552.101 of the Government Code, which protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The information at issue reveals details about an individual’s mortgage agreement. In Open Records Decision No. 373 (1993), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded as follows:

[a]ll financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373 at 3 (1983).

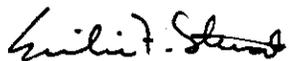
We believe that the information at issue implicates the privacy interests of the individual identified in Attachment T. However, we also believe there is a legitimate public interest in information that the commissioner utilized in the formation of draft legislation pertaining to the state’s usury laws. We therefore conclude that the privacy interests of the individual are best protected in this instance by the redaction of the individual’s identity. We have marked the information that the commissioner must withhold pursuant to section 552.101 to protect the individual’s common-law privacy interests. The remaining information contained in Attachment T must be released.

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

²Although you also raised section 552.110 of the Government Code, we note that this exception is intended to protect the proprietary, as opposed to the privacy, interests of individuals. Because we resolve this portion of your request under common-law privacy, we do not address the applicability of section 552.110.

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS/RWP/nc

Ref.: ID# 123033

Enclosures: Marked documents

cc: Mr. Donald Armstrong
P.O. Box 1059
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(w/o enclosures)