



October 23, 2001

Mr. Frederick D. Schraub  
Attorney for the San Antonio Housing Authority  
Escamilla & Poneck, Inc.  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2001-4797

Dear Mr. Schraub:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153786.

The San Antonio Housing Authority (the "authority"), which you represent, received a request for:

- (1) Information on prior tenants residing at 343 Eastly. Specifically contract rent amounts, lease periods, and new addresses where they can be reached.
- (2) Payments to Mary Helen Salinas for 2001 on 1038 Ellison, contract rent amounts, copies of the termination letter (if any), issued to Ms. Fernandez advising her of the reason for termination as well as advising her of the 15-day period that she has to request an informal hearing.<sup>1</sup>

You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.104, 552.105, 552.107, 552.108, 552.111, 552.116, 552.117, and 552.125 of the Government Code. We have considered the exceptions you claim.

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<sup>1</sup> As you did not submit a copy of the request letter for our review, this language is quoted from your letter to the requestor dated August 27, 2001.

As a preliminary matter, we note your indication that the authority is unable to provide information responsive to category one of the request in the requested format. The Public Information Act does not require a governmental body to create or prepare new information. Open Records Decision Nos. 572 (1990), 342 (1982). Additionally, the Act does not require a governmental body to prepare information in a form requested by a member of the public. Open Records Decision No. 467 (1987). However, if a request for public information requires programming or manipulation of data or the information could be made available in the requested form only at a cost that covers the programming and manipulation of data, a governmental body is required to provide the requestor with a written statement describing the form in which the information is available, a description of what would be required to provide the information in the requested form, and a statement of the estimated cost and time to provide the information in the requested form. Gov't Code § 552.231(a), (b). Once the governmental body provides the statement to the requestor, the governmental body has no obligation to provide the requested information in the requested form until the requestor responds to the governmental body in writing. *Id.* § 552.231(d); *see also* Gov't Code § 552.228 (stating the correct procedures for providing a suitable copy of information to a requestor who seeks information in electronic form). You have provided this office with a copy of the statement provided to the requestor. Until the authority receives a written response to this statement, the authority has no obligation to provide the information responsive to category one of the request.

Next, we address the authority's obligations under section 552.301 of the Government Code with respect to category two of the request. Pursuant to section 552.301(e)(1) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) 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. Gov't Code § 552.301(e)(1)(A)-(D). The authority failed to provide this office with written comments stating the reasons why each exception you raised would allow the information to be withheld, a copy of the written request, and a copy of the specific information requested or a representative sample.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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). Because you have not submitted information responsive to category two of the request, we have no basis for determining whether a compelling reason exists for withholding it. Thus, we have no choice but to order the information responsive

to category two of the request released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. *See* Gov't Code § 552.352.

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.* § 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 Public 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 General Services 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. 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 153786

c: Mr. George L. Alejos  
Chairman  
League of United Latin American Citizens  
Office of Affordable Housing, District XV  
9811 Ramblin River Drive  
San Antonio, Texas 78251