



April 17, 2002

Mr. Ric Gonzalez
Assistant City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2002-1929

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161461.

The City of Lewisville (the "city") received a request for information relating to Community Development Block Grant invoices for various Christian Community Action ("CCA") projects, and for a listing of other funding sources for CCA. You state that you have released most of the requested information in redacted form. You claim, however, that the grant recipients' names and addresses are excepted from disclosure under section 552.101 of the Government Code, in conjunction with the common-law right of privacy. We have considered the exception you claim and reviewed the representative sample of submitted information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the

¹We assume that the "representative sample" of responsive documents 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.

information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

In Open Records Decision No. 373 (1983) this office considered whether the statutory predecessor to section 552.101 of the Government Code required the City of Austin to withhold from public disclosure applications to a city-administered program to receive a federally funded loan or grant to rehabilitate applicants' homes. The decision explained that the application files contained information about an applicant's sources of income, employment, salary, mortgage payments, assets, medical and utility bills, social security and veterans' administration benefits, verification of employment and mortgage payments, credit history, age, ethnic origin, and family composition. Open Records Decision No. 373 at 1.

The decision concluded that the statutory predecessor to section 552.101, incorporating the common-law doctrine of privacy, generally excepted from required public disclosure financial information relating to an individual applicant for a housing rehabilitation grant. *Id.* at 4. However, the remainder of the requested information, including the applicant's age, ethnic origin, and family composition, was not private under the common law. *Id.*

We have examined the submitted information you have marked and conclude that it is not protected from disclosure under common-law privacy. *See* Open Records Decision No. 318 (1982) (names and addresses of individuals who occupy public housing are not protected by common-law privacy). Additionally, we are not aware of any law that makes this information confidential, nor do you raise any such statute. Accordingly, we conclude the city may not withhold the grant recipients' names based on section 552.101 of the Government Code. However, the city must withhold the recipients' family income information, which we have marked, as we find such information is private financial information. *See* Gov't Code § 552.101; Open Records Decision No. 373 (1983).

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).

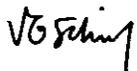
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 161461

Enc: Submitted documents

c: Mr. Reese Dunklin
Dallas Morning News
508 Young Street
Dallas, Texas 76265
(w/o enclosures)