



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

June 30, 1975

The Honorable N. Alex Bickley
City Attorney
City Hall
Dallas, Texas 75201

Open Records Decision No. 98

Re: Access to "hot check" submitted
in payment of tax.

Dear Mr. Bickley:

Pursuant to section 7 of the Open Records Act, article 6252-17a, V. T. C. S., you requested our decision in regard to a request to the City of Dallas Tax Assessor-Collector as follows:

This is a formal request for access to all data connected with account number . . . [specified]. This request specifically asks for a check dated 12/18/74 which was cancelled because of insufficient funds.

You agree that records showing the amount of taxes and whether they have been paid are public, but assert that the cancelled check might contain personal or private information which the city should not disclose to the public. The account in question concerns property held in the name of a trustee.

You cite no law, "either constitutional, statutory, or by judicial decision", which makes this information confidential within the meaning of section 3(a)(1), and we are aware of none. In Open Records Decision No. 63 (1974), we said:

We do not find that the concept of a constitutional zone of privacy has been authoritatively extended to this sort of financial information. See, California Bankers Association v. Shultz, 94 S. Ct. 1494 (1974) (where the Supreme Court declined to reach that issue).

In California Bankers Association v. Shultz, 416 U.S. 21 (1974), the issue of whether some constitutional protection for personal financial information exists against governmental intrusion was not ignored. The issue decided was the constitutionality of regulations issued under the Bank Secrecy Act of 1970. The Court upheld the record keeping and reporting requirements of the regulations issued under the Act and held that Fourth Amendment claims of bank depositors [whose checks the bank were required to copy and whose transactions in amounts over \$10,000 the banks were required to report] "may not be considered on the

record before us." Id. at 69 Three members of the Court, Justices Douglas, Brennan, and Marshall, dissented in separate opinions and considered the statute under which the regulations were issued to be unconstitutional on a variety of grounds, including First and Fourth Amendment infringements. Justices Powell and Blackmun concurred in the Court's opinion but expressed doubt as follows:

. . . I agree that the regulations do not constitute an impermissible infringement of any constitutional right.

A significant extension of the regulations' reporting requirements, however, would pose substantial and difficult constitutional questions for me. In their full reach, the reports apparently authorized by the open-ended language of the Act touch upon intimate areas of an individual's personal affairs. Financial transactions can reveal much about a person's activities, associations, and beliefs. At some point, governmental intrusion upon these areas would implicate legitimate expectations of privacy. Moreover, the potential for abuse is particularly acute where, as here, the legislative scheme permits access to this information without invocation of the judicial process. In such instances, the important responsibility for balancing societal and individual interests is left to unreviewed executive discretion, rather than the scrutiny of a neutral magistrate . . . Id. at 78-79 (Justice Powell, joined by Justice Blackmun).

Thus, a majority of the Court at least agrees that the question of a governmental access to personal financial information in the absence of a judicially-determined public need or interest raises "substantial and difficult constitutional questions."

In the context of the Open Records Act, we think these same "substantial and difficult constitutional questions" exist where the legislative scheme requires public access to detailed information about an individual's financial transactions without "invocation of judicial process", indeed, a scheme which precludes any "balancing societal and individual interests."

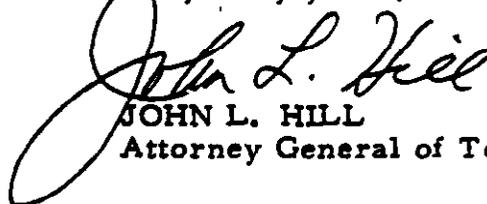
The purpose of the Open Records Act is to give all persons "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." V. T. C. S., art. 6252-17a, sec. 1. We have no information or idea as to how the information in question might serve this purpose. The Act permits no inquiry in this regard. Sec. 5(b).

Pursuant to the section 7(b) requirement that this office render a decision "consistent with standards of due process," we notified the individual whose check is sought to be inspected of the request and solicited his comments on the question. No answer has been received in the more than 90 days since we gave notice and an opportunity to be heard.

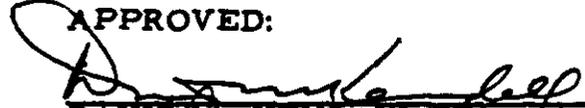
Thus, the issue as to whether a taxpayer's "hot check" is public information is presented in an almost total vacuum of law and fact, and with no public or private interest asserted by either the person who seeks the check or the person who wrote it.

The only facts available are that the city has the information and that it has been requested. The only law clearly applicable is the Open Records Act, which requires information held by a governmental body to be disclosed unless it falls within a specific exception. Sec. 3(a). In the absence of any assertion of a privacy interest by the affected individual, and applying this law to the only facts we have, the information is "public" and must be disclosed.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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