



The Attorney General of Texas

July 11, 1980

MARK WHITE
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501

701 Commerce, Suite 200
Dallas, TX. 75202
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

1220 Dallas Ave., Suite 202
Houston, TX. 77002
/650-0666

806 Broadway, Suite 312
Lubbock, TX. 79401
306.747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501
512/682-4547

700 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

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Honorable Lee E. Holt
City Attorney for Dallas
City Hall
Dallas, Texas 75201

Open Records Decision No. 246

Whether business personal property tax renditions filed by taxpayers of the city are available to the public under the Open Records Act

Dear Mr. Holt:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether business property tax renditions filed by taxpayers of the City of Dallas are available to the public. As to each 1975-79 tax return, the information requested consists of the identities of the taxpayer and the person attesting to the truth of the statements submitted, and the amount of "original cost" and "full book value" for the following categories: inventory of goods, wares and merchandise; consigned goods, goods in transit, or otherwise controlled; material, products and merchandise; automobile and delivery equipment; machinery and other equipment; furniture and fixtures; and miscellaneous and all other assets not enumerated above. As to each 1980 tax return, the requestor seeks the identity of the taxpayer and the affiant and the amount of "original cost" and "full book value" for the following: inventory of goods, wares and merchandise; consigned goods, goods in transit or otherwise controlled; material, products and merchandise; automobile and delivery equipment; machinery and equipment; furniture and fixtures; leasehold improvements; leased equipment; and miscellaneous. We note that the request is for broad categories of information in summary form and does not involve detailed listings of specific assets.

The city of Dallas presently makes available information regarding the identity of the taxpayer and affiant, and the amount of total assessed value, i.e., the sum of the items whose individual amounts are the subject of this request. The City contends that these summary amounts are excepted from disclosure by section 3(a)(1) of the Open Records Act, as "information deemed confidential by law"; by section 3(a)(4), as "information which, if released, would give advantage to competitors or bidders"; and by section 3(a)(10), as "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision."

In Open Records Decision No. 76 (1975), this office said that the rendition book of the tax assessor-collector of the La Pryor Independent School District constitutes public information. The information at issue in that decision was very similar to that requested here. It consisted of an "inventory of property" requiring that the affiant list the number and value of items in various categories: certain farm animals, listed by type; automobiles; trucks; tractors; machinery; stock, furniture and fixtures; and public utilities. Although the categories used by La Pryor reflect the rural character of the governmental unit, the information appears to be at least as detailed as that furnished to the City of Dallas. As in Open Records Decision No. 76, there is here no law or judicial decision of which we are aware which would make this information confidential, and thus, it is not excepted from disclosure by section 3(a)(1).

You suggest that Open Records Decision No. 107 (1975), which concluded that inventory information from grain warehouse reports was excepted under section 3(a)(10), is determinative of this issue. However, we believe that decision should be limited to its facts. The information at issue there was far more detailed in nature; moreover, the Commissioner of Agriculture had made a determination that information relating to current warehouse inventories was a "key factor in the business" and that disclosure "could cause substantial harm to the competitive position of the person from whom the information is obtained."

We have since emphasized that the limiting phrase "by statute or judicial decision" distinguishes section 3(a)(10) from its counterpart in the federal Freedom of Information Act and that information not already excepted under section 3(a)(1) is not made confidential under section 3(a)(10). Open Records Decision No. 233 (1980) Since the information at issue is not made confidential under any statute or judicial decision, we conclude that it is not excepted from disclosure under section 3(a)(10).

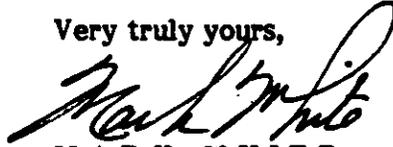
As we noted in Open Records Decision No. 233 (1980), section 3(a)(4) has been construed narrowly, as requiring a showing of a specific actual or potential harm in a particular competitive situation. In our view, such a showing cannot in this instance be made as a matter of law. Forms virtually identical to those requested are submitted to the county as well as to the city, and we are informed that the county makes them available to the public. The county form requires the affiant to provide full book value for the following items: inventory of goods, wares and merchandise; consigned goods, goods in transit or otherwise controlled; materials, products and merchandise; automotive and delivery equipment; machinery and other equipment; furniture and fixtures; and miscellaneous and all other assets not enumerated above.

Even if the values submitted to the county by a particular company do not square with the values it submits to the city, the two forms call for precisely the same information as of the same date. Unless a company has objected to the release of its answers to the county's questions we believe it has waived any right to object to

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release of its answers to those same questions when asked by the city. See Open Records Decision Nos. 161 (1977); 144 (1976). It is thus our opinion that business property tax renditions filed by taxpayers of the City of Dallas are not excepted from disclosure under any portion of the Open Records Act.

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

TED L. HARTLEY
Executive Assistant Attorney General

Prepared by Rick Gilpin
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

C. Robert Heath, Chairman
Jon Bible
Susan Garrison
Rick Gilpin