



**THE ATTORNEY GENERAL
OF TEXAS**

October 18, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Raul Calderon
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

Dear Mr. Calderon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID#s 7210 and 7268; this decision is OR89-302.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The City of Austin received open records requests for records relating to a federally funded rehabilitation program administered by the city. The city has released most of the requested records but seeks to withhold financial statements furnished to the city by applicants wishing to obtain federal grants on the grounds that such information is excepted from required public disclosure under prior open records decisions applying section 3(a)(1) of the Open Records Act.

This office agrees with your contention that Open Records Decision No. 373 (1983) governs the financial records at issue. Open Records Decision No. 373 held that financial information relating to an individual applicant for a housing rehabilitation grant, absent a showing of a "special circumstances" may be withheld from the public pursuant to a common-law right of privacy. There has been no such showing in this instance.

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We note that in Apodaca v. Montes, 606 S.W.2d 734 (Tex. Civ. App - El Paso 1980, no writ), similar financial information was held not to come within the protection of personal privacy. This office distinguishes the information at issue here from that in Apodaca, however, because the public interest in that information was affirmatively established by statute, see V.T.C.S. art. 2372p-3, § 1. This office is not aware of any similar statute regarding the information at issue here. You may, therefore, withhold the financial information submitted to this office pursuant to Open Records Decision No. 373. We note, however, that the fact that the applicant for the grant is the owner of the property to be rehabilitated is not protected by the right of privacy; this information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-302.

Yours very truly,

*Open Government Section
of the Opinion Committee*
Open Government Section
of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

DAN/RWP/bc

cc: Mr. Gregg McDonald
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