



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

July 3, 1991

Ms. Genevieve G. Stubbs
First Assistant General Counsel
Texas A&M University System
300 System Administration Bldg.
College Station, Texas 77843-1116

Open Records Decision No. 590

Re: Availability under the Texas Open
Records Act of information identifying
donors and amount of donations to
West Texas State University (RQ-2183)

Dear Ms. Stubbs:

West Texas State University has received an open records request for the following information:

A list of all contributions to the Shared Visions capital campaign since 1988. The list should include the donor, date and amount of the donation, as well as the form of the donation, i.e. whether it was in cash, a pledge, stock, land, policies or other form. If the donation was a pledge or in a form other than cash, please include whether the university has received the actual amount or the actual property.

As we understand, "Shared Visions" was the name given to an advertising campaign initiated jointly by West Texas State University and the West Texas State University Development Foundation to raise funds for support of the university. As counsel for the university, you have raised several objections to the release of the requested information, and accordingly, have asked this office for a determination of your disclosure duty. You have submitted for our inspection various materials responsive to the request.¹ After careful review of your legal arguments, we conclude that the requested information must be released.

¹In your brief, you argue that "there is no separate accounting that could earmark . . . a gift or donation as directly related to or a result of the 'Shared Visions Capital Campaign,' unless payment had been made pursuant to a pledge." The duty of a public body to respond to an open records request includes a good faith effort to relate the request to information that it holds. Open Records Decision No. 561 (1990) at 8-9. The documents submitted for our inspection appear to be responsive to the request; you do not, apparently, contend they are nonresponsive.

You first object to release of the requested material under section 3(a)(1) of the Open Records Act, article 6252-17a, V.T.C.S., which excepts from disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You raise two distinct arguments under this exception. Relying on Open Records Decision No. 259 (1980), you claim that donor information as to unfulfilled pledges are made confidential by statutory law because section 2(F) of the Open Meetings Act, article 6252-17, V.T.C.S., excludes the public from a meeting discussing a pledge or pledge agreement. In Open Records Decision No. 259 this office allowed the city of Port Neches to withhold from public disclosure information relating to a pledged monetary contribution to the city for the construction of a library. The pledgor did not wish the pledge agreement to be disclosed. The opinion reasoned that "[s]ince the city could at this time exclude the public from a meeting discussing the pledge, the city may . . . also decline to reveal the contents of the pledge agreement while negotiations are pending, *i.e.*, not later than February 1, 1981" (the date full payment of the pledge was due).² However, this office has implicitly overruled the reasoning of Open Records Decision No. 259 in decisions explaining that the Open Records and Open Meetings Acts are separate statutes to be applied without reference to each other. *See* Open Records Decision Nos. 491, 495 (1988). Open Records Decision No. 491 stated the following:

Because the acts are distinct, the only way to give proper effect to both is to apply each according to its own terms. . . . Whether or not a meeting of an entity must be open, a record of that meeting which the entity assembles or maintains is subject to required disclosure if the entity is a 'governmental body' within the Open Records Act and the record is not within one of the act's specific exceptions.

Id. at 4. Thus, even if information about pledges had been discussed at a meeting subject to the Open Meetings Act, a list of the pledges and the pledgors could not be withheld under the Open Records Act on that basis. In your case, no such meeting even took place. We therefore reject your first section 3(a)(1) argument and explicitly overrule Open Records Decision No. 259.

Your second claim for exception under section 3(a)(1) is based on that provision's coverage of information protected under common law or constitutional

²The opinion took the view that the pledge, because it was outstanding, was still in the "negotiating stage," and would "remain so until payment of the full amount of the pledge."

privacy doctrine. You assert that information about pledges and donations involves "the most intimate aspects of human affairs," and should therefore be withheld under Open Records Decision No. 455 (1987). Prior decisions concerning disclosure of financial matters have made a distinction between "background financial information furnished to a public body about an individual" and "the basic facts regarding a particular financial transaction between the individual and the public body." Open Records Decision Nos. 545 (1990); 523 (1989); 385 (1983). This office has found information in the first category to be protected by privacy law, but has found information in the latter to be available to the public. *Id.* We find that the requested information falls into this latter category, and cannot be excepted by section 3(a)(1).

Under Texas common law, a disclosure of information constitutes an invasion of privacy if it meets two conditions: (1) the information contains highly intimate or embarrassing facts about a person's private affairs, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 545 (1990). A pledge or donation of property to the university is a financial transaction between the donor or pledgor and a public body. As such, it does not involve facts about an individual's *private* affairs. It is, moreover, a matter of legitimate public concern, as the public has an interest in knowing who funds and therefore potentially influences public entities. This concern extends to the amount of the donation as well as the identity of the donor. Although you argue separately against the disclosure of information regarding outstanding pledges as being embarrassing and highly offensive to a reasonable person, we find no reason to treat information about a promised transaction differently from that relating to completed gifts. Thus, we do not find that common-law privacy bars the disclosure of the requested material.

The standard for determining violations of constitutional privacy interests requires that the information relate to "the most intimate aspects of human affairs." Open Records Decision No. 455 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). As financial dealings between an individual and a public body cannot be considered an intimate aspect of life, we disagree with your argument that constitutional privacy excepts this information from disclosure.

We must also reject your arguments under sections 3(a)(4), 3(a)(5), and 3(a)(10). You presented no legal argument for your assertion of section 3(a)(4),

and this office therefore will not address it.³ See Open Records Decision No. 363 (1983) (governmental body must establish how and why an exception applies to requested information). Nor is section 3(a)(10) applicable to your circumstances. That section extends protection to "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Yours is not a situation in which the requestor seeks commercial or financial information that the public body has obtained from a person. See Open Records Decision No. 568 (1990) (names and percentages of each member of the Cigarette Tax Recovery Trust Fund not "obtained" from distributors, but generated by distributor's participation in Trust Fund). The information here is generated and maintained by the university in documentation of particular transactions. Section 3(a)(10) therefore cannot provide a basis for exception here.

Section 3(a)(5) excepts

information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor.

The purpose of this section is to "protect a governmental body in its planning and negotiating position in regard to particular transactions, and no longer." Open Records Decision No. 222 (1979) at 1-2. The opinions construing section 3(a)(5), as well as the actual language of the exception, tie the provision to situations entailing the expenditure of public funds to acquire or use the subject property for public purposes in order to prevent speculation from inflating the price. *Id.* You have made no showing that the information requested relates to such a situation, nor have you advised us of any planning or negotiating position of the university that would be jeopardized by release of the information. Thus, we cannot accept your claim under section 3(a)(5).

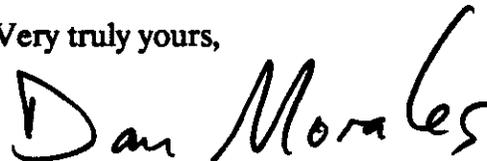
As the requested information does not fall within any exception to the Open Records Act, you must release it to the requestor.

³Moreover, no legal argument supporting the application of this section to the facts is apparent to us.

SUMMARY

Information identifying donors or pledgors, and amounts of donations and pledges, including outstanding pledges, to a public university is not within an exception to the Texas Open Records Act.

Very truly yours,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, slightly slanted style.

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