



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1992

Ms. Mattye G. Jones
Dallas Housing Authority
2525 Lucas Drive
Dallas, Texas 75219

OR92-190

Dear Ms. Jones:

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# 15390.

You have received a request for information relating to low-rent public housing programs administered by the Dallas Housing Authority (the "authority"). Specifically, the requestor seeks:

[w]aiting lists for the Section 8 and Low-Rent Public Housing programs for the period of May 1, 1988 through December 31, 1990[; and]

[i]ndividual applications for the Section 8 and Low-Rent Public Housing programs made by persons wishing to participate in the respective programs for the period of May 1, 1988 through December 31, 1990[.]

Section 7(a) of the Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. You received the request for information under the Open Records Act on November 7, 1991. You requested a decision from this office on March 19, 1992. Consequently, you failed to request a decision within the 10 days required by section 7(a) of the act.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.* Normally, the presumption of openness can be overcome only by a compelling demonstration that the information should be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third party interests are at stake. Open Records Decision No. 150 (1977). You claim that the requested information is excepted from required public disclosure by third-party privacy interests as incorporated by section 3(a)(1) into the Open Records Act.

You have submitted to us for review the requested waiting list and an application form representative of the requested information. The waiting list includes names, addresses, telephone numbers, race, preferences afforded pursuant to federal regulations, income, veteran status, present housing condition code, current rent paid, eligibility date, and information on disability or elderly status. You advise us that financial information, birth certificates, marriage licenses, medical information, rental history, social security numbers, criminal records, race information, family composition, and other information needed to evaluate the applicant's eligibility for housing may be included in the application.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Information may be withheld from required public disclosure under common law privacy if it meets the criteria articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. The test for constitutional privacy involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Id.* The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. *See* Open Records Decision No. 447 (1986) at 4.

This office has held that the names of former residents of a public housing development are not excepted by constitutional or common law privacy. Open Records Decision No. 318 (1982). This office has also held that common law or constitutional privacy does not protect information about the family composition, employment, age, and ethnic origin of applicants for housing rehabilitation grants. Open Records Decision No. 373 (1983). In that decision, this office also concluded:

[I]n our opinion, all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373. Although financial dealings between an individual and governmental bodies are matters of public interest and are ordinarily not within the protection of common law or constitutional privacy, Open Records Decision No. 590 (1991) at 3, information about an individual's financial status and past financial history is sometimes excepted under section 3(a)(1). Open Records Decision No. 373 noted that, while in certain instances there might not be an adequate demonstration of legitimate public interest to justify the invasion of the applicant's privacy, a requestor might, by showing "special circumstances," overcome the presumption that there is no sufficient legitimate public interest. Accordingly, this decision held that the availability of "personal financial information" should be addressed on a case-by-case basis. See also Open Records Decision Nos. 600 (1992); 545 (1990) (excepting information relating to an employee's participation in a deferred compensation plan). Also, information about a person's illnesses, operations, physical handicaps, or prescription medications is generally excepted by common law or constitutional privacy and therefore excepted under section 3(a)(1) of the Open Records Act. Open Records Decision No. 455 (1987).

We have examined the information submitted to us for review. We conclude that information reflecting the applicants' personal finances, including income, source of income, rental history, current rent paid, and information about applicants' illnesses, operations, physical handicaps, or prescription medications meet the test for common law privacy and must be withheld from required public

disclosure under section 3(a)(1) of the Open Records Act.¹ The remaining information, however, including the names, social security numbers, addresses, family composition, marital status, employment, age, elderly status, present housing condition code, telephone numbers, veteran status, preferences afforded pursuant to federal regulations, ethnic origin, and eligibility date of persons listed on the applicant waiting list for public housing, are not intimate or embarrassing and are thus not excepted by common law privacy. This information is also clearly not protected by constitutional privacy and 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 OR92-190.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/sp

¹We note that the availability of other information that may be included in the applications is governed by statute, e.g., social security benefit information, 42 U.S.C. § 1306, federal income tax information, 26 U.S.C. § 7213, veterans administration benefit information, 38 U.S.C. §3301, and consumer credit reports, 15 U.S.C. § 1681b. In addition, the availability of some criminal history record information is governed by federal regulations. See 28 C.F.R. § 20.20(b); see also Open Records Decision Nos. 565 (1990); 342 (1982). Please note as well that only the Bureau of Vital Statistics may withhold birth certificates from required public disclosure under the Open Records Act. See art. 6252-17a, V.T.C.S., § 3(a)(15); see also Open Records Decision No. 338 (1982).

Ref.: ID# 15390
ID# 14775
ID# 15460
ID# 15648

cc: Ms. Mary Dews
Executive Director
The Walker Project, Inc.
1140 Empire Central, Suite 330
Dallas, Texas 75247