



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1992

Mr. Leonard W. Peck, Jr.
General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-692

Dear Mr. Peck:

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# 17509 (your ID No. OR92-0922-0433).

The Texas Department of Criminal Justice received a request for the "names and unit (worksite location) of all members of Texas State Employee's Union and American Federation of State, County and Municipal Employee's Union." You possess a list of employees who pay their dues to these organizations through payroll deductions. You assert this information is protected by a right of privacy and thus excepted from required public disclosure under section 3(a)(1) of the Open Records Act. We agree.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory or by judicial decision." This exception applies to information made confidential by common-law rights of privacy. *Industrial Found. of the South v. Texas Indus Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977). One branch of the common-law right to privacy, the public disclosure of private facts, is recognized as a basis for exception from required disclosure under section 3(a)(1) of the Open Records Act. *Id.* Information may be withheld from disclosure under this branch of common-law privacy if it meets two requirements: 1. it contains highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities, and 2. it is of no legitimate concern to the public. *Id.* at 683.

Financial information relating to an individual, such as 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. Open Records Decision No. 373 (1983). However, financial information involving a transaction between an individual and the state is not a legitimate public concern and thus not excepted from required public disclosure by common-law privacy. Open Records Decision No. 600 (1992) (participation in group insurance programs funded by the state). Financial information that reveals a public employee's investment decisions also satisfies the first test for protection from public disclosure by common-law privacy. Open Records Decision No. 545 (1990) (participation in a deferred compensation plan); Open Records Decision No. 600 (1992) (optional insurance coverages, designation of beneficiary of insurance policy, participation in TexFlex employee benefit plan). Moreover, authorization forms showing an employee's decision whether to authorize the direct deposit of paychecks to a bank account, the name of the bank and the account number also reveal a personal financial decision. *See id.* at 11-12.

We think an employee's decision to allocate part of his salary for the purpose of paying union dues is a personal financial decision. The payroll deduction is not a transaction between an employee and the state; therefore, we see no legitimate public interest in this information. Accordingly, the list of employees who have authorized the payment of dues to employee organizations through payroll deduction is protected by the common-law right of privacy and thus excepted from public disclosure under section 3(a)(1) of the Open Records Act.

We have determined that the Open Records Act prohibits you from releasing this information to the public. You ask whether the requestor in this case, a representative of the American Federation of State, County and Municipal Employees (AFSCME), Palestine suboffice, has a special right of access to the requested information. In other words you are asking whether this requestor's right to this information is limited to that of a member of the public.

Under the Open Records Act, a governmental body must treat each request for information uniformly without regard to the position or occupation of the person making the request. *See* V.T.C.S. article 6252-17a, § 5(c). Moreover, the Open Records Act prohibits selective disclosure to members of the public selected by a governmental body. *See* Open Records Decision No. 463 (1987). This is so even when the requestor requests records about himself. The act does not grant the

subject of records a special right of access to records concerning him. *See* Open Records Decision No. 507 (1988). Similarly, in this case, the requestor's affiliation with the AFSCME does not give him a special right of access to information about that union.

If this requestor has a special right of access to this information, that right must be found outside of the Open Records Act. The Comptroller of Public Accounts of the State of Texas has promulgated Rule 5.46, regarding payroll deductions for membership dues, which states in part:

An employer must submit a detail report each month to each eligible organization that receives the deductions. The report must be submitted in the manner required by the organizations unless the employer is incapable of complying with the requirement.

See Rules of the Comptroller of Public Accounts of the State of Texas, Rule 5.46(p)(3)(A). This rule is authority, not based on the Open Records Act, for you to release a monthly report about payroll deductions for membership fees to the organization that receives the deductions. According to the documents you enclosed, the requestor is not the individual whom the AFSCME has designated as its primary contact. Since the report must be submitted in the manner required by the organization, we do not think this rule authorizes you to release a copy of the monthly payroll report to a union representative who is not that union's designated primary contact. Thus, the status of the requestor here is that of a member of the public.

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 OR92-692.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/lmm

Ref.: ID# 17509
ID# 17586

cc: Mr. Robert Frazier
AFSCME
Palestine Suboffice
1003 Mallard Street
Palestine, Texas 75801