



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. Kenneth H. Ashworth
Commissioner
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711

OR94-355

Dear Mr. Ashworth:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24626.

Pursuant to chapters 142 and 143 of the Education Code, the Texas Higher Education Coordinating Board (the "board") administers the advanced research program and the advanced technology program, respectively. See Educ. Code §§ 142.003(a), 143.004(a). In accordance with the code sections establishing these programs, the board has provided for peer review panels to review proposals for specific projects at eligible institutions and to determine awards. See *id.* §§ 142.003(c), 143.004(c). The board now has received a request for "the names and affiliations of the panelists who reviewed earth science proposals submitted to the 1993 Advanced Research Program and those who reviewed energy proposals submitted to the 1993 Advanced Technology Program." You contend that, pursuant to section 552.101 of the Government Code,¹ the board need not release to the requestor the information he seeks.

¹The requestor's letter to the board seeking this information was dated February 1, 1994, and stamped received by the board on February 4, 1994. Ten days after the board received the request letter, you faxed our office a letter claiming that the requested information was confidential for several reasons, although you did not list any specific exceptions or applicable statutes. We understood you to argue that section 552.101 of the Government Code excepts the requested information from required public disclosure.

Subsequently, in a letter this office received on April 4, 1994, you explicitly raised section 552.101 and section 552.104 as exceptions that you believe exempt this information from required public disclosure. Section 552.301(a) of the Government Code requires a governmental body to request a

Section 552.101 exempts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You cite no statutes that expressly provide confidentiality for the requested information, and we are unaware of any that do so. Nor do you raise any constitutional arguments; indeed, we do not believe that the requested information is confidential under either the federal or state constitution. You appear to argue that the requested information is confidential "by judicial decision," *i.e.*, under the common law.

The Texas Supreme Court, in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), articulated a two-pronged test that we use to determine whether information is confidential under the doctrine of common-law privacy and therefore exempt from required public disclosure under section 552.101. Under the test, information is confidential if (1) it contains highly intimate or embarrassing facts about an individual's private affairs such that the release of the information would be highly offensive to a reasonable person and (2) the public has no legitimate interest in it. *Industrial Found.*, 540 S.W.2d at 685. The information requested here is not highly intimate or embarrassing; furthermore, we believe that the public has a legitimate interest in the information. Accordingly, we conclude that the requested information is not confidential, and the board must release it to the requestor. *Cf.* Open Records Decision Nos. 437 (1986) (stating that outside consultant is, for some purposes, part of governmental body that hired it); 395 (1983) at 5-6 (concluding that statutory predecessor to section 552.103 does not except names and addresses of consultants).

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

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

(Footnote continued)

decision from the attorney general within ten calendar days of receiving the request. A governmental body that fails to raise a discretionary exception (one that does not pertain to confidential information), such as section 552.104, within the ten-day period waives that exception. *See* Open Records Decision No. 515 (1988) at 6. Thus, we do not consider your arguments that the board may withhold the requested information pursuant to section 552.104.

KKO/MAR/rho

Ref.: ID# 24626

cc: Mr. Nicholas E. Pingitore, Jr.
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