



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1994

Ms. Johanna McCully-Bonner
General Counsel
Texas Department of Housing and
Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR94-601

Dear Ms. McCully-Bonner:

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# 24083.

The Texas Department of Housing and Community Affairs (the "department") received a request for "copies of the Low Income Tax Credit Application on the Mady Development Corporation's Garden Gate Apartment Project." The requestor further specifies that he is seeking "all information associated with [the]application, including, but not limited to, financial statements."

Section 552.305 of the Government code provides that:

(a) In a case in which information is requested under this chapter and a third party's privacy or property interests may be involved, including a case under Section 552.101, 552.104, 552.110, or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision.

(b) A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released.

(c) The governmental body may, but is not required to, submit its reasons why the information should be withheld or released.

Mr. Mark R. Vowell with the Law Offices of Jenkins & Gilchrist, legal counsel for Community Dynamics-Fort Worth, Ltd. in connection with the above-referenced apartment project, informed the department that they were agreeable to the release of copies of the Tax Credit Application provided, however, that all personal financial information was deleted from the application. Accordingly, the department withheld the relevant personal financial statement. You contend this information may be excepted from required public disclosure under sections 552.101 and 552.110 of the Government Code.

Section 552.110 excepts "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." In Open Records Decision No. 592 (1991), this office reexamined the section 552.110 exception and held that, unless information constitutes trade secrets or is "privileged or confidential" under the common or statutory law of Texas, it cannot be withheld under section 552.110. Open Records Decision No. 592 at 2-8. Because neither the department nor the legal counsel for Community Dynamics appears to claim that the requested information constitutes a trade secret, we will only consider whether the personal financial information is privileged or confidential under the common or statutory law of Texas.

As a general rule, statutory confidentiality requires express language making particular information confidential. See Open Records Decision No. 478 (1987). You have not cited nor are we aware of a law that expressly deems the requested information confidential. A subsequent letter from Mr. Mark A. Weibel with Jenkins & Gilchrist contends that the commentary following section 2.01 of the Texas Revised Limited Partnership Act, V.T.C.S. article 6132a-1, provides the statutory basis for withholding the requested information. Section 2.01 identifies the information that must be in the certificate of limited partnership and designates that the partnership is formed when the certificate is filed with the Office of the Secretary of State. It does not, however, contain language making the financial statements of limited partners confidential. We note that although the commentary following section 2.01 may evidence that the legislature considered this type of information private, the commentary does not constitute express statutory language.

Mr. Weibel also claims that article 342-705, V.T.C.S., makes the information confidential. Article 342-705 provides that financial institutions shall not be required to recognize the request by a third party to examine certain financial information without a subpoena or an order for production of records by a court. The term "financial institution" is defined for purposes of article 342-705 as "a state or national bank, or state or federal savings and loan association." V.T.C.S. art. 342-705, § 4. Article 342-705 does not apply to information in the possession of a governmental body. Therefore, the requested information is not confidential under article 342-705. However, some of the information may be confidential under federal law.

A social security number or "related record" is excepted from required public disclosure under section 552.101 of the Government Code¹ in conjunction with the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994) (copy enclosed); see also 42 U.S.C. § 405 (c)(2)(C)(v) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the department should ensure that the information is not confidential under federal law. We will next consider whether the information may be excepted from disclosure under common-law privacy.

For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. article 6252-17a, section 3(a)(1)).

In Open Records Decision No. 373, this office determined that financial information relating to an individual constituted highly intimate or embarrassing information and, therefore satisfied the first requirement of the common-law privacy doctrine. Open Records Decision No. 373 (1983) at 3. However, to be excepted from public disclosure under common-law privacy, information must also be of no legitimate public interest. Prior decisions of this office 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).

¹Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Background financial information supplied to a governmental body is generally of no legitimate public interest and therefore protected by common-law privacy.

We have reviewed the information submitted to this office. We believe the information in question is background financial information satisfying the first part of the common-law privacy doctrine. As there is no indication in the requestor's letter suggesting a legitimate public interest in the release of this information, you must withhold the requested information under common-law privacy as incorporated by section 552.101 of the Government Code. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/LBC/rho

Ref.: ID# 24083

Enclosures: Submitted documents

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