



Office of the Attorney General
State of Texas

February 24, 1995

DAN MORALES
ATTORNEY GENERAL

Mr. Lowell M. Stokes
Assistant City Attorney
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR95-079

Dear Mr. Stokes:

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# 26842.

You state that the City of El Paso's Department of Community and Human Development, a federally funded department controlled by the United States Department of Housing and Urban Development ("HUD"), has received a request for information from a private individual who borrowed community development funds to rehabilitate his private property. You inform us that the rehabilitation program provides financing for property as loan/grant combinations. The grants require no payback, if the owners comply with the terms of the program. One such term requires the property owner to provide tenants displaced by the rehabilitation construction with relocation benefits, such as moving expenses, downpayment assistance, and rental payment assistance. In the instant case, a property owner has submitted a request to the city under the Open Records Act, asking for a complete break-down for all relocation costs associated with his property. You have submitted this information to us, which consists of a single page listing the tenants' names, the amount of moving expense and cash rental and/or down payment already disbursed to each person, and the amounts of cash rental and/or down payment committed for each person. The city is willing to release this information to the property owner, but it has received written advice from HUD's Regional Relocation and Real Estate Officer stating that records and files related to displacement of persons by HUD-assisted program activities are confidential under federal regulation codified at 49 C.F.R. section 24.9.¹ The letter from the HUD officer also states that Open Records

¹The letter also cites federal statutes that restrict or prohibit the release of certain information, such as the Federal Freedom of Information Act, 5 U.S.C. § 552A; social security benefit information, 42 U.S.C. § 1306; federal income tax information, 26 U.S.C. § 7213, Veterans Administration benefit

Decision No. 373 (1983) and Open Records Letter Nos. 92-190 and 92-469 (1992) place financial information about displaced persons under the protection of common-law and constitutional privacy rights, and that such information shall not be released when requested by "unauthorized persons."

A federal regulation adopted pursuant to statutory authority may make information in the possession of a Texas governmental body confidential by statutory law within section 552.101 of the Government Code, which prevents public disclosure of "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Open Records Decision No. 476 (1987). The federal regulation cited in the HUD letter provides as follows:

(a) *Records.* The Agency² shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. . . .

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part *are confidential regarding their use as public information*, unless applicable law provides otherwise.

49 C.F.R. § 24.9 (headings are emphasized in original; emphasis in body of rule is added).

It appears from this provision, that these records are not available to members of the public under the Open Records Act. We are unaware of any law providing that these records are available as public information.

In issuing a ruling under the Texas Open Records Act, this office must defer to federal interpretations of federal law. We can, however, suggest that you raise with HUD's Regional Relocation and Real Estate Officer the possibility that the property owner is not merely a member of the public for purposes of the quoted federal regulation, and that the rulings of this office on which he relies may be distinguishable in this case.

The Open Records Act states the conditions under which members of the general public may obtain information from a governmental body. *See* Gov't Code §§ 552.007; 552.021(b); Attorney General Opinion JM-119 (1983). However, a governmental body may have authority based on a source other than the Open Records Act to disclose records to specific individuals. *See* Open Records Decision Nos. 579 (1990) at 9

(Footnote continued)

information, 38 U.S.C. § 3301; and consumer credit reports 15 U.S.C. § 1681b. These statutes do not appear to apply to the information that has been submitted for our review.

²The regulations define "Agency" as "the Federal agency, State, State agency, or person that acquires real property or displaces a person." 49 C.F.R. § 24.2(a). A "State agency" includes an "instrumentality of a State or of a political subdivision of a State." *Id.* § 24.2(a)(4).

(exchanging information among litigants in informal discovery is not voluntary release to member of public); 468 (1987) (employee of governmental body is not a member of the general public for purposes of seeing his own evaluations); 454 (1986) at 2 (overruled in part by Open Records Decision No. 468) (release of record to individual because of constitutional obligation under due process clause was not voluntary release to member of public).

Even though the property owner requested the records pursuant to the Open Records Act, he is not merely a member of the general public within that statute, but occupies a special status as the person who must pay the relocation benefits. The federal regulation makes the records "confidential regarding their use as *public* information." 49 C.F.R. § 24.9 (emphasis added). If there is a legal basis for providing him with the records other than a public information statute, it is possible that the regulation will not apply. You suggest in your letter to us that the following provision of the HUD Handbook may establish a legal basis for the property owner to see the records:

However, *upon the request of an affected person*, the grantee/Agency shall give the person or his designated representative the opportunity to inspect and copy all pertinent records. [Emphasis added.]

HUD Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition*, ch. 6, para. 6-1c. The letter from the HUD officer states that the records and files related to the displacement of persons by HUD-assisted program activities are confidential pursuant to paragraph 6-1c of the Handbook. We suggest you communicate with the HUD officer to determine whether or not you are each referring to the same language of the handbook, and if so, whether you can resolve any disagreements about its meaning.

Open Records Decision No. 373 (1983),³ as quoted in the statement from the HUD Relocation and Real Estate Officer, states that

financial information relating to an individual . . . *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. [Emphasis added.]

Open Records Decision No. 373 goes on to state that "[t]he other requirement of common law privacy is that the information 'not be of legitimate concern to the public.'" See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The test for common-law privacy applied in open records

³We will not discuss Open Records Letter Nos. 92-190 and 92-469 separately, since they merely apply the conclusion of Open Records Decision No. 373 to other documents.

rulings relates to disclosure of information to the general public, not to disclosure to a specific individual who has an individualized need for the information. Open Records Decision No. 373 moreover concludes that the determination of whether the public's interest is sufficient to justify its disclosure must be made on a case-by-base basis, because "a requestor may, by showing 'special circumstances,' overcome the presumption that there is no sufficient legitimate public interest" in the information. Thus, Open Records Decision No. 373 acknowledges that financial information related to an individual may under some circumstances not be private information. More important, Open Records Decision No. 373 deals only with access to this information by members of the general public who have only a generalized interest in the information. In the case before us, the recipients of relocation benefits were formerly tenants of the property owner, and the benefits will be paid by the property owner. His individual interest in this financial information is not addressed by open records rulings on the privacy of financial information.

Since we are unable to resolve this matter under the Open Records Act, we are providing you with information which we hope will help you to resolve this matter by contacting the HUD officer again. If you have questions about this letter, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/LRD/rho

Ref.: ID# 26842

Enclosures: Submitted documents

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