



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1995

Ms. Helen M. Gros
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-548

Dear Ms. Gros:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 25308.

The City of Houston (the "city") has received a request for "applications or proposals for housing projects approved for funding by the City of Houston since January 1993." The city asserts that section 552.101 of the Government Code excepts from disclosure some of the requested information. The city sent each third party whose records have been requested a letter of notification, shifting the burden of explaining why the information should be withheld to those parties, as permitted by section 552.305 of the Government Code. This office also sent notification letters to the third parties. First, we consider whether any of the information that has been submitted to this office is confidential under section 552.101. Second, we consider whether any of the third parties have established any other basis for withholding the requested information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by the common-law right of privacy. For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out by the Texas Supreme Court 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.

All financial information relating to an individual ordinarily constitutes highly intimate or embarrassing information and, therefore, satisfies the first criterion set out in *Industrial Foundation*. Open Records Decision Nos. 545 (1990) at 3, 373 (1983) at 3. However, to be excepted from disclosure under common-law privacy, the 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) at 4, 523 (1989) at 3-4, 385 (1983) at 2. Background financial information is generally of no legitimate public interest. *See, e.g.*, Open Records Decision No. 545 (1990) at 4-5. Thus, financial information relating to an applicant for a housing rehabilitation grant is excepted from disclosure by common-law privacy. Open Records Decision No. 373 (1983) at 4. Similarly, financial information, including credit reports and financial statements, relating to veterans participating in the Veterans Land Program is excepted from disclosure by common-law privacy. Open Records Decision No. 523 (1989) at 4. On the other hand, information about accounts receivable at a public hospital, individuals who are delinquent in their utility payments to public utilities, and students who have defaulted on student loans is of legitimate public interest and, thus, is not protected by common-law privacy. Open Records Decision Nos. 480 (1987) at 6-7, 443 (1986) at 3-4, 385 (1983).

We have reviewed the information submitted to this office. We believe that the financial information about individuals is background financial information. The governmental body's rationale for collecting the financial information in this case is the same as the rationale for collecting financial information about veterans who applied for loans under the Veterans Land Program. Thus, we believe that the situation in this case is analogous to the situation addressed in Open Records Decision No. 523. Therefore, you may withhold the financial information about individuals under common-law privacy. We have marked the information accordingly.

You may not, however, withhold the financial information about corporations or other business associations under common-law privacy. The common-law right to privacy is designed to protect the feelings and sensibilities of human beings. Open Records Decision No. 625 (1994) at 4. Corporations and business associations do not

have a right to privacy. Open Records Decision No. 620 (1993) at 4. Therefore, you may not withhold any information about a corporation or other business association under common-law privacy. On the other hand, prior decisions of this office conclude that title 26, section 6103(a), of the United States Code makes income tax "return information" confidential. See Open Records Decision No. 600 (1992) at 8-9. Therefore, you may withhold all the income tax returns contained in the documents you submitted for review.

One third party has written us claiming that the submitted information is protected under additional exceptions to required public disclosure, that is sections 552.104 and 552.110 of the Government Code. Another third party has written us claiming that some of the submitted information constitutes trade secrets and confidential financial information under section 552.110. Section 552.104 is inapplicable in this case because it protects the interests of governmental bodies; it is not designed to protect the interests of private parties that submit bids or proposals to governmental bodies. See Open Records Decision No. 592 (1991) at 8-9. Here, the city has not asserted that the release of the submitted information would harm its interests.

Section 552.110 of the Government Code protects trade secrets from required public disclosure. The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757 (1939). See *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958); RESTATEMENT OF TORTS § 757 cmt. b (1939). This office considers six factors listed by the Restatement to determine whether information is a trade secret.¹ The governmental body or the companies whose records are at issue must make a prima facie case for exception as a trade secret under section 552.110. See Open Records Decision No. 552 (1990) at 5. None has done so in this case. Therefore, we have no basis for concluding that any of the submitted information is excepted from required public disclosure as "trade secrets" under section 552.110.

Section 552.110 also excepts from disclosure "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." In order for information to be excepted from required public disclosure as

¹The six Restatement factors are as follows:

- (1) the extent to which the information is known out side of [the company's] business;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

“commercial or financial information,” the information must be privileged or confidential under the common or statutory law of Texas. Open Records Decision No. 592 (1991) at 7. We are not aware of any statutory or common-law basis for withholding the submitted information as “commercial or financial information” under section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/MRC/LRD/rho

Ref.: ID# 25308

Enclosures: Marked documents

cc: Ms. Susanne C. Seré
Gulf Coast Legal Foundation
2626 South Loop West, Suite 415
Houston, Texas 77054-2641
(w/o enclosures)

Ms. Lorine Ladet
Ladet Motels, Inc.
3641 North MacGregor
Houston, Texas 77004
(w/o enclosures)

Mr. Robert M. Bobinchuck
America's Preferred Homes
3050 Post Oak Boulevard, Suite 165
Houston, Texas 77056
(w/o enclosures)

Mr. Exter McGinty, Jr.
10802 Ballantine
Houston, Texas 77075
(w/o enclosures)

Mr. David A. Siegel
Central Florida Investments, Inc.
5601 Windhover Drive
Orlando, Florida 32819
(w/o enclosures)

ATTN: CEO
NUBIA Redevelopment Partnership
Nations Bank Community Development Corporation
902 West Trade Street, Suite 1020
Charlotte, North Carolina 28202
(w/o enclosures)

Mr. Travis R. Cooper
12507 Lietrim Way
Houston, Texas 77047
(w/o enclosures)

ATTN: CEO
Jackson Pacific Joint Venture
707 Richards Street, 4th Floor
Honolulu, Hawaii 96813
(w/o enclosures)

Mr. John W. Davis
P.O. Box 8155
Houston, Texas 77288-8155
(w/o enclosures)

Ms. Amy L. Loose-Mitchell
Williams, Birnberg & Andersen, L.L.P.
6671 Southwest Freeway, Suite 303
Houston, Texas 77074-2284
(w/o enclosures)