



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 21, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, TX 77251-1562

OR95-970

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 33620.

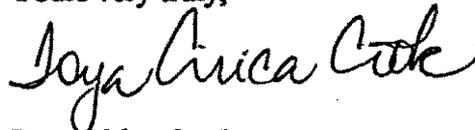
The City of Houston (the "city") has received a request for information concerning a proposal submitted to the city by Edkat, Inc. for consideration of its eligibility regarding funding for housing projects for low income persons. The specific records that the city seeks to withhold involve copies of income tax returns and third party financial statements. The city asserts that such information is excepted from required public disclosure under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 incorporates specific statutes that protect information from public disclosure.

The city asserts that the individual income tax returns of the president of Edkat, Inc. are confidential under Title 26, section 6103(a) of the United States Code in conjunction with section 552.101 of the act. We agree. Section 552.101 incorporates the confidentiality provisions of federal statutes and regulations. Further, in Attorney General Opinion H-1274 (1978), this office concluded that tax returns furnished to a governmental entity do not lose their character as confidential documents. *Id.* at 3. We conclude that the individual income tax returns of the company president must be withheld from required public disclosure in their entirety.

The city also asserts that third party personal financial information is excepted from required public disclosure under common-law privacy. Section 552.101 also excepts from required public disclosure information held confidential under case law. Pursuant to the Texas Supreme Court decision in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), section 552.101 applies to information when its disclosure would constitute the common-law tort of invasion of privacy through the disclosure of private facts. Under *Industrial Foundation*, a governmental body must withhold information on a common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Id.* at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. article 6252-17a, section 3(a)(1)). The doctrine of common-law privacy does not except the disclosure of facts concerning a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 523 (1989). However, common-law privacy generally protects the "background" financial information of the individual, that is, information about the individual's overall financial status and past financial history. *See* Open Records Decision Nos. 523 (1989), 373 (1983). Accordingly, we have reviewed the documents submitted and conclude that such information is excepted from required public disclosure in its entirety.

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 requestor and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Toya Cirica Cook
Assistant Attorney General
Open Records Division

TCC/RHS/ch

Ref: ID# 33620

Enclosures: Submitted documents

cc: Mr. Howard M. Kahn
804 Commerce
Houston, Texas 77002-1707
(w/o enclosures)