



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 21, 1997

Ms. Monita Rose Johnson-Henley
Staff Attorney
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR97-1870

Dear Ms. Johnson-Henley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107994.

The Texas Department of Housing and Community Affairs (the "department") received a request for

any documentation regarding the Villa Alegre Apartments which is owned by the City of El Paso Housing Authority, to confirm whether apartment "C-11" has been designated as a unit for low-income or very-low-income residents, under the Affordable Housing Disposition Program. I would also like to have a copy of any documentation that will show for what period of time apartment "C-11" was in any program to house low-income and very-low-income residents.

You claim that four documents are responsive to the request and argue that some of the information contained in these documents is excepted from required public disclosure by section 552.101 of the Government Code based on a right of privacy. We have considered the exception you claim and have reviewed the documents at issue.

You explain that the requested records contain information that reflects the financial information and financial status of public housing tenants. The information you seek to withhold includes the tenant's name, the housing unit's designation, the tenant's annual gross income with a listing of all sources of income, the tenant's maximum annual income to be eligible for housing, the housing unit's monthly rent, and the unit's maximum rent. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses both common-law and constitutional privacy. Common-law privacy excepts from disclosure

private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

In Open Records Decision No. 373 (1983), this office determined that financial information submitted by applicants for federally-funded housing rehabilitation loans and grants was "information deemed confidential" by a common-law right of privacy. The financial information at issue in Open Records Decision No. 373 (1983) included sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history. Similarly, we held that the credit reports, financial statements, and financial information included in loan files of individual veterans participating in the Veterans Land Program were excepted from disclosure by the common-law right of privacy. Open Records Decision No. 523 (1989). We have stated that financial information relating to an individual applicant "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." Open Records Decision Nos. 523 (1989), 373 (1983) at 3.

Applying the second requirement of the common law privacy test, that the information not be of legitimate concern to the public, Open Records Decision No. 373 (1983) stated as follows:

Although any record maintained by a public body is arguably of some legitimate concern to the public, we do not believe that the second requirement of the common law privacy test can ordinarily be satisfied where the only relation of the individual to government is as an applicant for a housing rehabilitation grant. While it is true that the public has some interest in knowing whether public funds expended in such grants are being given to qualified applicants, we believe that in the ordinary situation this interest will not be sufficient to justify the invasion of the applicant's privacy that would result from disclosure of information concerning his financial status.

In particular cases, a requestor may demonstrate a public interest that will overcome the second requirement of the common law privacy test; whether there is a public interest in this information sufficient to justify its disclosure must be decided on a case-by-case basis. Open Records Decision Nos. 523 (1989), 373 (1983) at 4.

Open Records Decision Nos. 373 (1983) and 523 (1989) thus draw a distinction between the confidential "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. 523 (1989), 385 (1983). We relied on this distinction in Open Records Decision No. 385 (1983), determining that a public hospital's accounts receivable showing patients' names and the amounts they owed were open to the public. In contrast, information on amounts deposited in an inmate's jail commissary account was determined to be background financial information under the standard of Open Records Decision No. 373 (1983). Open Records Decision No. 396 (1983). Subsequent decisions of this office analyze questions about the confidentiality of background financial information consistently with Open Records Decision No. 373 (1983). *See* Open Records Decision Nos. 600 (1992) (personal financial information not relating to the financial transaction between an individual and a governmental body is protected), 545 (1990) (employee's participation in deferred compensation plan private), 523 (1989), 481 (1987) (individual financial information concerning applicant for public employment is closed), 480 (1987) (names of students receiving loans and amounts received from Texas Guaranteed Student Loan Corporation are public). *See also* Attorney General Opinions H-1070 (1977); H-15 (1973) (laws requiring financial disclosure by public officials and candidates for office do not invade their privacy rights).

We believe that the reasoning and conclusions of Open Records Decision Nos. 523 (1989) and 373 (1983) apply to most of the financial information in this case. The tenant's annual gross income with a listing of all sources of income, the tenant's maximum annual income to be eligible for housing, and the housing unit's maximum rent are background financial information. This information is therefore excepted from disclosure by the common-law right of privacy under section 552.101. Neither the department nor the requestor has provided any information indicating that there is a public interest in access to this background financial information.

We did not imply in Open Records Decision No. 373 (1983), however, that the amount of any individual grant matched with the recipient's name could be withheld from disclosure. Open Records Decision Nos. 523 (1989), 385 (1983). In Open Records Decision No. 374 (1983) for example, we held that the names of doctors who receive medicaid payments, and the amounts paid, are subject to disclosure. Thus, the remaining information, the tenant's name, the housing unit's designation, and the housing unit's monthly rent are not protected by a right of privacy. See Open Records Decision No. 480 (1987) (discussing constitutional privacy and financial information); *but see* Act of June 1, 1997, H.B. 2577, § 10, 75th Leg., R.S. (to be codified at Gov't Code § 2306.039) (making personal financial information submitted under department program confidential) (act effective September 1, 1997). We have marked the information that the department must withhold.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 107994

Enclosures: Submitted documents

cc: Mr. Guy H. Lawrence
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(w/o enclosures)