



May 5, 1999

Mr. Keith Stretcher  
City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR99-1229

Dear Mr. Stretcher:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123893.

The City of Midland (the “city”) received an open records request for the following categories of information: 1) the addresses of all houses demolished and reconstructed as well as those houses which were rehabilitated during the fiscal years 1994/95, 1995/96, and 1996/97, 2) a listing of the valuation of Community Development Block Grant funds applied to these individual projects during the years including 1994 through 1999, and 3) all applications and building permits pertaining to these projects during the years 1994 through 1999. You contend that portions of the applications that individuals have submitted to the city for housing rehabilitation grants and loans are excepted from required public disclosure pursuant to sections 552.101 and 552.130 of the Government Code.<sup>1</sup>

Citing Open Records Decision Nos. 626 (1994) and 373 (1983) as authority, you contend that information revealing applicants’ financial background is protected from public disclosure pursuant to the common-law right of privacy in conjunction with section 552.101 of the Government Code. Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

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<sup>1</sup>Because you do not argue that information responsive to items 1 and 2 is excepted from public disclosure, we assume the city has released all such information. If it has not, it must do so at this time.

In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- 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 No. 373 at 3.

The rehabilitation program application you submitted to us for review requests information about the applicant's financial history and past credit history. This information reveals the applicant's sources of income, salary, mortgage payments, assets, credit history, and other personal financial information. We conclude that this type of information is highly intimate or embarrassing. Moreover, the information you have provided does not indicate any special circumstances that would make the applicants' personal financial information a matter of legitimate public concern. In accordance with Open Records Decision No. 373, we have marked the portions of the application that the city must withhold from the public pursuant to section 552.101 of the Government Code.

You also contend that some of the information contained in the grant and loan application implicates the applicants' constitutional privacy rights. See *Industrial Found.*, 540 S.W.2d at 678 (section 552.101 also embraces constitutional privacy). The constitutional right to privacy consists of two related interests. The first interest applies to the individual's independence in making certain kinds of important decisions with regard to the traditional "zones of privacy" described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). These "zones" include matters related to marriage, procreation, contraception, family relationships, and child rearing, and education. Because the release of the information at issue would not affect the applicants' decisions regarding these zones of privacy, this aspect of constitutional privacy is inapplicable here.

The second interest is in the nondisclosure of personal matters and may be somewhat broader than the first. Unlike the test for common-law privacy, the test for constitutional privacy involves a *balancing* of the individual's privacy interests against the public's need to know information of public concern. Although such a test might appear more protective of privacy interests than the common-law test, 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

at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). After reviewing the application information, this office could identify no information coming within the constitutional right of privacy that is not otherwise excepted from public disclosure by common-law privacy.

You next contend that because the grant and loan applications request medical information, such information is confidential under section 5.08 of V.T.C.S. article 4495b and sections 611.002 and 611.004 of the Health and Safety Code. The Texas Medical Practice Act, V.T.C.S. article 4495b provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician *that are created or maintained by a physician* are confidential and privileged and may not be disclosed except as provided in this section. [Emphasis added.]

V.T.C.S. art. 4495b, § 5.08(b). Because the information at issue was neither created nor maintained by a physician, article 4495b is inapplicable to the records at issue. Similarly, section 611.002 of the Health and Safety Code makes confidential “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient *that are created or maintained by a professional*” (emphasis added) and therefore is equally inapplicable here. Although some medical information may implicate an individual’s common-law privacy interests, this office must make such a determination on a case-by-case basis. Open Records Decision No. 370 (1983).

Finally, section 552.130(a)(1) of the Government Code requires that the city withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Additionally, section 552.130(a)(2) requires the withholding of information relating to “a motor vehicle title or registration issued by an agency of this state.” We agree that to the extent that the grant and loan application requires these types of information from the applicant, such information must be withheld from the public pursuant to section 552.130(a) of the Government Code.

We have marked the portions of the completed application form you submitted to this office as “Exhibit C” as representative of the types of information that the city must withhold from the public.<sup>2</sup> The city must release the remaining portions of the requested applications.

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<sup>2</sup>We note that the application form requests the applicant’s social security number. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), make confidential any social security number obtained or maintained by any “authorized person” pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. Prior to releasing an applicant’s social security number, the city should ensure that the number was not obtained nor is maintained by the city pursuant to any provision of law, enacted on or after

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.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being particularly prominent.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RWP/eaf

Ref.: ID# 123893

encl.: Marked documents

cc: Ms. Midge Erskine  
T.R.U.T.H.  
3306 West Golf Course Road  
Midland, Texas 79703  
(w/o enclosures)