



May 6, 1999

Mr. Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Boulevard
Austin, Texas 78705

OR99-1239

Dear Mr. Hutchings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123885.

The Office of Consumer Credit Commissioner (the “office”) received a request for “copies of all documents ever filed pertaining to” Green Tree Financial Corporation (“Green Tree”), Woodgate Consolidated Incorporated, and Woodgate Utilities Incorporated. You state that the office only has records relating to Green Tree. You contend that some of the records relating to Green Tree are excepted from disclosure pursuant to sections 552.101, 552.110, 552.111, and 552.112 of the Government Code. We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue.¹

You have divided the submitted documents into attachments B through M. You contend that the personal financial information in attachments B, C, and D is excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common-law right to privacy. The common-law right to privacy protects information 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 373 (1983), we concluded that personal financial information can generally be considered highly intimate and embarrassing:

In our opinion, all financial information relating to an individual —
including sources of income, salary, mortgage payments, assets,

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. . . .

Of course, personal financial information does not meet the test for common-law privacy unless it is also of no legitimate interest to the public. In Open Records Decision No. 373 (1983), we concluded that the determination of whether the public's interest in obtaining highly intimate and embarrassing information is sufficient to justify its disclosure must be made on a case-by-case basis. In this case, we agree that the personal financial information you have marked in attachments B, C, and D, as well as the additional information that we have marked in attachment C, is highly intimate and embarrassing and of no legitimate interest to the public. See Open Records Decision Nos. 620 (1993), 600 (1992). Therefore, the office must withhold this information from disclosure pursuant to section 552.101.²

You contend that attachment E is excepted from disclosure pursuant to section 552.112. Section 552.112(a) excepts from disclosure "information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both." The office is responsible for the regulation of Green Tree, which is a "financial institution" for purposes of section 552.112(a). See Open Records Decision No. 158 at 5-6 (1977). Attachment E is the report of an examination of Green Tree. We conclude, therefore, that attachment E is excepted from disclosure pursuant to section 552.112(a). See Open Records Decision No. 392 (1983).

Next, you argue that attachments F, G, H, I, and J are excepted from disclosure pursuant to section 552.111. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. ORD 615 at 4-5. You inform us that

²Because we are able to resolve this issue under section 552.101, we do not address your section 552.110 arguments against the disclosure of this information.

attachments F, G, H, I, and J are examples of internal memoranda that are attached to an application for license and circulated among staff members who review the application and recommend approval or denial. Having reviewed the internal memoranda, we find that only portions of attachments F and H are excepted from disclosure under section 552.111. We have marked these portions accordingly. The remaining portions of F and H, as well as attachments G, I, and J, are not protected by section 552.111 because they consist entirely of factual information.

You contend that the social security number contained in attachment K, a document titled "Personal Affidavit," is excepted from disclosure pursuant to section 552.101 in conjunction with federal law. A social security number is deemed confidential by the 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it is obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Therefore, the office must withhold the social security number in attachment K from disclosure under section 552.101 if the office obtained or maintains the number pursuant to any provision of law enacted on or after October 1, 1990.³

Lastly, you explain that an applicant for a license must submit fingerprint cards to the office, and the office uses the fingerprint cards to check the applicant's criminal history background. Attachments I and L indicate whether the Texas Department of Public Safety ("DPS") or the Federal Bureau of Investigation ("FBI") found any criminal history information on a particular applicant. You argue that the applicant's fingerprint card and the notations as to whether the applicant has a criminal history are excepted from disclosure under section 552.101 in conjunction with sections 14.154 and 14.155 of the Finance Code.

Subchapter D of chapter 14 of the Finance Code sets out the procedure by which the office obtains an applicant's criminal history record information from the DPS and the FBI. Section 14.154 of the Finance Code provides:

- (a) Criminal history record information received by the office is confidential and is for the exclusive use of the office.
- (b) Except on court order or as provided by Section 14.155(a), the information may not be released or otherwise disclosed to another person.

Section 411.082 of the Government Code defines criminal history record information as follows:

³ Attachment K, a form with a blank for driver's license number, does not contain a Texas driver's license number. However, since we are reviewing only a "representative sample" of the documents at issue, and documents not submitted to this office may contain Texas driver's license numbers, we note that Texas driver's license numbers are excepted from disclosure pursuant to section 552.130 of the Government Code.

(2) "Criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

(A) identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or

(B) driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

We agree that section 14.154 deems confidential the notations in attachments I and L indicating whether or not the applicant has a criminal history. Section 14.155 does not provide for the release of this information to the requestor. Thus, the office must withhold this information from disclosure under section 552.101. On the other hand, the fingerprint card that an applicant submits to the office is not criminal history record information. Therefore, the fingerprint card is not confidential under section 14.154 and is not excepted from disclosure.

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 123885

encl. Marked documents

cc: Ms. Kathy Harper
Jenkins & Gilchrist
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
(w/o enclosures)