



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2005

Ms. Susan Barron
Senior Assistant City Attorney
City of Odessa Legal Department
P.O. Box 4398
Odessa, Texas 79760-4398

OR2005-05061

Dear Ms. Barron:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225736.

The City of Odessa (the "city") received a request for information related to a specified individual's application to the "Home of Your Own Program." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. The city raises section 552.101 in conjunction with constitutional and common law rights to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy" concerning marriage, procreation, contraception, family relationships, and child rearing and education that the United States Supreme Court has recognized. *See Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); Open Records Decision No. 455 at 6-7 (1987). This aspect of constitutional

privacy balances the individual's privacy interest against the public's interest in the information. *See* Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs).

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 at 3 (1983).

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.

Open Records Decision No. 373 at 3 (1983). In particular cases, a requestor may demonstrate a public interest that will overcome the second requirement of the common law privacy test. However, 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). 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); *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). Accordingly, we have marked background financial information the city must withhold under section 552.101 in conjunction with common law privacy. We find, however, that there is a legitimate public interest in the remaining submitted information as it directly relates to the financial transaction between the city and the applicant. *See* Open Records Decision No. 523 (1989). We further find that this information does not fall within the zones of privacy or implicate the individual’s privacy interests for the purposes of constitutional privacy. *See* Open Records Decision No. 480 (1987) (discussing constitutional privacy and financial information). Accordingly, none of the remaining submitted information may be withheld under section 552.101 in conjunction with either common law or constitutional privacy.

In summary, the city must withhold the information we have marked in conjunction with common law privacy. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

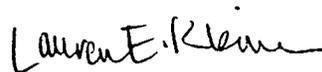
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 225736

Enc. Submitted documents

c: Mr. Augustin Velasquez
4008 East 30th Street
Odessa, Texas 79762
(w/o enclosures)