



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2009

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2009-03939

Dear Ms. Sims:

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# 338164.

The City of Lubbock (the "city") received a request for a specified application for services and for information pertaining to inspections of a specified property. You claim some of 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.

Initially, we note the requestor excludes from his request driver's license information and social security numbers. Thus, any of this information within the submitted documents is not responsive to the instant request. Our ruling does not address this non-responsive information, and the city need not release it in response to the request.

Section 552.101 of the Government Code 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 the doctrine of common-law privacy. Common-law 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that the following types of information are excepted from required public disclosure under common-

law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and information concerning the intimate relations between individuals and their family members, *see* ORD 470. However, this office has found that, absent special circumstances, the names, addresses, and marital status of members of the public are not excepted from required public disclosure under common-law privacy. *See* ORD 455.

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 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. Additionally, in Open Records Decision No. 523 (1989), 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. Similarly, we thus conclude that financial information relating to an applicant for housing assistance 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.

The second requirement of the common-law privacy test requires that the information not be of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 668. While the public generally has some interest in knowing whether public funds expended for housing assistance are being given to qualified applicants, we believe that ordinarily this interest will not be sufficient to justify the invasion of the applicant's privacy that would result from disclosure of information concerning his or her financial status. *See* ORD 373 (although any record maintained by governmental body is arguably of legitimate public interest, if only relation of individual to governmental body is as applicant for housing rehabilitation grant, second requirement of common-law privacy test not met). In particular cases, a requestor may demonstrate the existence of 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. *See* ORDs 523, 373.

Open Records Decision Nos. 373 and 523 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, 385 (1983). Subsequent decisions of this office analyze questions about the confidentiality of background financial information consistently

with Open Records Decision No. 373. *See* Open Records Decision Nos. 600 (personal financial information not relating to the financial transaction between an individual and a governmental body is protected), 545 (employee's participation in deferred compensation plan private), 523, 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); *but see* Open Records Decision Nos. 602 at 5 (1992) (records related to salaries of those employees for whom the city pays a portion are subject to the Act). Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Therefore, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is excepted from disclosure under section 552.136 of the Government Code.<sup>1</sup> Section 552.136(b) provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The city must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and section 552.136 of the Government Code. The remaining responsive information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.136 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Shipp", written in a cursive style.

Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/cc

Ref: ID# 338164

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)