



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2013

Ms. Marivi Gambini
Paralegal
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2013-16819

Dear Ms. Gambini:

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# 500536.

The City of Irving (the "city") received a request for all the applications to buy or rent city-owned property on Tudar Lane and all correspondence related to these applications. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. Section 552.101 encompasses information protected by other

¹We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

statutes, such as such as section 2306.039 of the Government Code, which provides in pertinent part:

(a) Except as provided by Subsections (b) and (c), the [Texas Department of Housing and Community Affairs (the "department")] and the Texas State Affordable Housing Corporation [(the "corporation")] are subject to Chapters 551 and 552.

(b) Chapters 551 and 552 do not apply to the personal or business financial information, including social security numbers, taxpayer identification numbers, or bank account numbers, submitted by a housing sponsor or an individual or family to receive a loan, grant, or other housing assistance under a program administered by the department or the [corporation] or from bonds issued by the department, except that the department and the corporation are permitted to disclose information about any applicant in a form that does not reveal the identity of the sponsor, individual, or family for purposes of determining eligibility for programs and in preparing reports required under this chapter.

Id. § 2306.039(a), (b). Although you raise section 2306.039(b), we note section 2306.039 applies only to records held by either the department or the corporation. The information at issue is maintained by the city. Thus, section 2306.039(b) does not apply to any of the information at issue. Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with section 2306.039 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *See id.* at 683. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (mortgage payments, assets, bills, and credit history).

In Open Records Decision No. 373 (1983), this office determined 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 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 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 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 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, 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). We note, however, this office has concluded the names and present addresses of current or former residents of a public housing development are not protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 318 (1982). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not protected from disclosure under privacy interests. *See* Open Records Decision No. 268 (1981); *see also* Open Records Decision Nos. 600 at 9-10, 545, 489 (1987), 480. Whether the public has a legitimate interest in an individual's sources of income must be determined on a case-by-case basis. *See* ORD 373 at 4; *see also* ORDs 600, 545.

You claim some of the submitted personal financial information is protected by common-law privacy. Upon review, we find the personal financial information you have highlighted, and

the additional information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail address you have highlighted, and the additional e-mail addresses we have marked, are not specifically excluded by section 552.137(c). *See id.* § 552.137(c). As such, these e-mail addresses must be withheld under section 552.137 of the Government Code, unless their owners affirmatively consent to their release.³ *See id.* § 552.137(b).

Section 552.147(a) of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Thus, the city may withhold the social security numbers you have highlighted, and the additional social security numbers we have marked, under section 552.147(a) of the Government Code.⁴

In summary, the personal financial information you have highlighted, and the additional information we have marked, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the e-mails address you have highlighted, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless their owners affirmatively consent to their release. The city may withhold the social security numbers you have highlighted, and the additional social security numbers we have marked, under section 552.147 of the Government Code. The city must release the remaining information.

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.

²As our ruling for this information is dispositive, we need not address your remaining argument under section 552.136 of the Government Code.

³We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov’t Code § 552.147(b).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 500536

Enc. Submitted documents

c: Requestor
(w/o enclosures)