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January 7, 1980

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Honorable John C. Ross, Jr.
City Attorney
P. O. Box 2000
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Open Records Decision No. 233

Re: Whether monthly rental paid
by car rental agencies at city
airport is public under Open
Records Act.

Dear Mr. Ross:

You request our decision pursuant to section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act. The City of Lubbock, has received a request for the monthly rental figures paid by car rental agencies at the city airport. The rent is based on a percentage of gross revenue from the airport operations. The City contends that the information is excepted from required public disclosure under section 3(a)(4), 3(a)(10), or both.

The relevant portion of section 3(a)(10) excepts from public disclosure:

**(10) . . . commercial and financial information
obtained from a person and privileged or confidential
by statute or judicial decision**

(Emphasis added).

This exception is similar to one contained in the federal Freedom of Information Act, but the emphasized language in the Texas statute distinguishes our provision and narrows its scope considerably. See 5 U.S.C. § 552(b)(9). This office has observed that it is unlikely that section 3(a)(10) exempts any records not already within the 3(a)(1) blanket exception for all "information deemed confidential by law." Attorney General Opinion H-258 (1974); Open Records Decision No. 203 (1978). Neither the City nor any of the parties affected have referred us to any applicable statute or judicial decision which would make this information privileged or confidential, nor are we aware of any such authority. It is our decision that the information is not excepted from disclosure under section 3(a)(10).

The City also contends that the monthly rental figures are excepted under section 3(a)(4), which excepts "information which, if disclosed, would give advantage to competitors or bidders." The City cites the fact that the

requestor is another car rental agency which does not operate out of the airport in support of its position that this exception applies. The City argues that disclosure of the rental figures would reveal the actual income of each of those car rental companies operating out of the airport, and would also provide a market share analysis for competitors of those operating out of the airport.

This office has construed the 3(a)(4) exception narrowly, requiring a showing of a specific actual or potential harm in a particular competitive situation. See Open Records Decision Nos. 222 (1979); 203, 184 (1978); 170 (1977); 124 (1976); 95, 75 (1975); 48, 46, 45 (1974). There is no specific bidding situation involved here. There is no adequate showing of a specific harm which would or is likely to occur from public disclosure of the City's rent receipts from these companies. We decline to conclude that the exception is applicable on the basis of the speculation that competitive harm would result from disclosure of this information. It is our decision that the information is not excepted under section 3(a)(4).

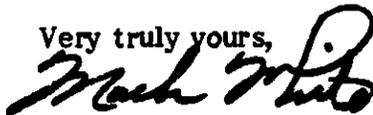
Section 6(3) of the Open Records Act specifically makes public:

(3) information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law

One court has said: "The legislature did not intend for section 6 to diminish the force of the exclusions contained in section 3." Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177, 185 (Tex. Civ. App. — Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). However, section 6(3) does at least demonstrate the legislature's intention that information concerning the receipt of public funds will ordinarily be available for public inspection. This is consistent with the traditional common law view that books and accounts of public bodies are among the most accessible of public records. See Palacios v. Corbett, 172 S.W. 777 (Tex. Civ. App. — San Antonio 1915, writ ref'd). We believe that this long-standing policy of public access to a governmental body's financial records, combined with the Open Records Act's requirements that it be construed liberally in favor of access, see last sentence of sec. 1; sec. 3(b) (withholding not authorized "except as specifically stated in this section."); sec. 14(b) (withholding not authorized "except as expressly so provided"); 14(d) ("Act shall be liberally construed in favor of the granting of any request for information"), compel a narrow reading of the exceptions.

It is our decision that the monthly rental figures based on a percentage of gross income paid to the City are not excepted under sections 3(a)(4) or 3(a)(10), and thus are public and are required to be disclosed.

Very truly yours,



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