



The Attorney General of Texas

April 26, 1983

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Mr. Albert DeLaRosa
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P. O. Box 1088
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Open Records Decision No. 373

Re: Availability under the
Open Records Act of informa-
tion from application for
housing rehabilitation grants

1607 Main St., Suite 1400
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Dear Mr. DeLaRosa:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to the availability of information from housing rehabilitation grant applications.

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You indicate that the Office of Neighborhood Revitalization of the city of Austin "administers a program to which individuals can apply for a federally funded loan and/or grant to rehabilitate their home." The application files disclose the individual's sources of income, employment, salary, mortgage payments, assets, medical and utility bills, social security and veterans' administration benefits, verification of employment and mortgage payments, credit history, age, ethnic origin, and family composition. You suggest that some or all of this information is excepted from disclosure by section 3(a)(1) of the Open Records Act, as "information deemed confidential by law," specifically, the constitutional and common law right of privacy.

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In Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976) [hereinafter IAB], the Texas Supreme Court recognized one of the four categories of common law privacy described by Professor Prosser. See Prosser, Privacy, 48 Calif. L.Rev. 383 (1960). The court declared that common law privacy exists in any information which contains highly intimate or embarrassing facts about a person, such that disclosure would be highly objectionable to a person of ordinary sensibilities, provided the information is not of legitimate concern to the public. 540 S.W.2d 668 at 683, 685. This office has frequently invoked this standard to determine whether specific information is confidential. See, e.g., Open Records Decision Nos. 351, 343, 339, 328, 318, 316, 308 (1982); 294, 269, 268 (1981); 262, 260, 258, 241 (1980). It has not, however, been heretofore applied to financial information about individuals.

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Some of the information submitted with these housing grant applications is specifically confidential in the custody of the originating agency, e.g., social security benefit information, 42 U.S.C. §1306; federal income tax information, 26 U.S.C. §7213; and veterans administration benefit information, 38 U.S.C. §3301. In addition, federal law strictly limits the distribution of consumer credit reports by credit reporting agencies. See 15 U.S.C. §1681b.

A number of cases have recognized a cause of action for invasion of privacy where a creditor has publicly disclosed a debtor's default or non-payment. In Brents v. Morgan, 299 S.W. 967 (Ky. 1927), for example, the court held that where a creditor placed a notice in a show window on a principal street, stating that his debtor owed him a debt, there was an invasion of privacy. In Trammell v. Citizens News Company, Inc., 285 Ky. 529, 148 S.W.2d 708 (1941), the court said that publication in a newspaper of a notice that a person owed an account at a grocery store was an invasion of the individual's right of privacy. The court found that the publication could have been made "only for the purpose of exposing the debtor to contempt, ridicule or disgrace." 148 S.W.2d at 710.

In Biederman's of Springfield, Inc. v. Wright, 322 S.W.2d 892 (Mo. 1959), the court upheld a cause of action for invasion of privacy where a creditor appeared in his debtor's place of employment and followed her around while proclaiming in a loud voice that she was a deadbeat. Moreover, in Santiesteban v. Goodyear Tire & Rubber Company, 306 F.2d 9 (5th Cir. 1962), the court found an invasion of privacy where a creditor had removed the tires from his debtor's automobile and left it standing on its rims in full view of the debtor's fellow employees and others.

Although more recent cases have emphasized that communication of debt information "must be accompanied by . . . communication to the public in general," Kinsey v. Macur, 107 Cal. App. 3d 265, 165 Cal. Rptr. 608, 611 (1980), they have consistently recognized that a cause of action for invasion of privacy will exist where there is sufficient "publicity." See Graney Development Corporation v. Taksen, 92 Misc. 2d 764, 400 N.Y.S.2d 717, 720 (N.Y. Sup. Ct. 1978); Kaletha v. Bortz Elevator Company, Inc., 383 N.E.2d 1071 (Ind. Ct. App. 1978); Challen v. Town and Country Charge, 545 F.Supp. 1014 (N.D. Ill. 1982). There is no doubt that the placement of information in a public record, available to any requestor, constitutes sufficient disclosure to satisfy the "publicity" requirement. See Industrial Foundation, supra, at 683-84.

Thus, there is statutory and judicial authority for withholding income tax information, information regarding benefits received from federal programs, credit history and debt information, and assets and income source information under common law privacy. In Hecht v.

Pro-Football, Inc., 46 F.R.D. 605 (D.D.C. 1969), a subpoena duces tecum was filed to compel the disclosure of the financial records of persons who were not parties to the litigation. The court declared:

The right of privacy and the right to keep confidential one's financial affairs is well recognized. It seems to be part of human nature not to desire to disclose them. . . . even if the information is not privileged, and it is not, it still may be oppressive or unreasonable to require disclosure at the taking of a deposition.

46 F.R.D. at 607.

We are in accord with this view. In our opinion, all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, 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.

The other requirement of common law privacy is that the information "not be of legitimate concern to the public." IAB, supra, at 685. In IAB, the court said that, although

[t]here may be circumstances in which the special nature of the information makes it of legitimate concern to the public even though the information is of a highly private and embarrassing nature. . . . [i]n general. . . the public will have not legitimate interest in such highly private facts about private citizens.

Id. at 685. The court declared that, unless the requestor can demonstrate special circumstances, information which meets the first requirement of the common law privacy standard will be presumed to be not of legitimate public concern. Id.

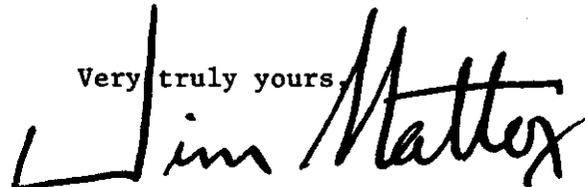
Although any record maintained by a public body is arguably of some legitimate concern to the public, we do not believe that the second requirement of the common law privacy test can ordinarily be satisfied where the only relation of the individual to government is as an applicant for a housing rehabilitation 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. Because, however, a requestor may, by showing "special circumstances," overcome the presumption that there is no sufficient legitimate public interest in private information of an intimate nature, we conclude that the determination of whether the public's interest in obtaining this information is sufficient to justify its disclosure must be made on a case-by-case basis. As noted, however, in the usual situation, we do not believe that financial information relating to an individual applicant for a housing rehabilitation grant will be of legitimate public concern.

As to information about an individual applicant's family composition, employment, age, and ethnic origin, we have found no statute or judicial decision holding that it is ordinarily excepted by either a common law or constitutional right of privacy.

In summary, it is our decision that, absent a showing of special circumstances, financial information relating to an individual applicant for a housing rehabilitation grant is excepted from disclosure by a common law right of privacy. The other information at issue here is not excepted from disclosure and should be furnished to the requestor.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, sweeping initial "J".

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