



**THE ATTORNEY GENERAL
OF TEXAS**

April 24, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Garry Mauro
Commissioner
General Land Office
1700 North Congress
Austin, Texas 78701

Open Records Decision No. 523

Re: Whether information in loan files of individual veterans participating in the Veterans Land Program is accessible under the Open Records Act (RQ-1546)

Dear Mr. Mauro:

You have received two requests under article 6252-17a, V.T.C.S., the Texas Open Records Act, for information in loan files of veterans who are participating in the Veterans Land Program. The Texas Veterans Land Program was established by article III, section 49-b, of the Texas Constitution to make low interest real estate loans to eligible Texas veterans. It continues a long-standing custom of rewarding the military service of citizens with land. Tex. Const. art. III, § 49-b, commentary (Vernon 1984).

The program is administered according to the provisions of chapter 161 of the Natural Resources Code. To apply for a loan, the veteran chooses a tract of land to purchase, completes a contract of sale, and submits a loan application to the Veterans Land Board. Nat. Res. Code §§ 161.281 - 161.288. The veteran must provide various documents to the board, including a financial statement, income tax return information, and military documents. These documents are first submitted to the local county committee appointed pursuant to section 161.217 of the Natural Resources Code. The local committee submits to the board a report on the financial responsibility of the veteran, an opinion as to whether the transaction is bona fide, an opinion on the reasonable value of the land, and a statement of the veteran's credit rating. Nat. Res. Code § 161.218. The local committee's report is included in the veteran's file along with the tax return information, the financial statement, purchase and sales documents, a credit report on the veteran, and paperwork prepared by the state agency.

You have received a request for access to a large number of veterans' loan files. You believe that the following documents and information in these files are

protected from public disclosure by state or federal privacy laws:

1. Federal tax returns and tax return information.
2. Credit reports.
3. Financial statements.
4. The 'confidential' reports of the county committees, containing an opinion concerning a Veteran's financial responsibility.
5. Federal military records.

You raise no other exception to public disclosure under the Open Records Act and accordingly waive other exceptions. See, e.g., Open Records Decision No. 325 (1982). You inform us that this request covers more than 1,000 and possibly as many as 20,000 files and have submitted for review a typical loan file which contains these five kinds of documents. It also contains copies of the contract of sale, the warranty deed, title insurance information, purchase vouchers, correspondence sent to the applicant by the Veterans Land Board, and history sheets and checklists prepared by employees of the board to show the status of the application. You do not seek to withhold these items.

The other request covers a much smaller body of material. It identifies a group of participants in the Veterans Land Program by name and requests their home phone numbers and addresses, as well as certain appraisal and sale information. Although the attorney for the Veterans Land Board initially argued that the phone numbers and addresses were information related to litigation that could be withheld under section 3(a)(3) of the Texas Open Records Act, the lawsuit has reached a stage where it is no longer necessary to withhold this information. Accordingly, we need not address this argument.

The second request also seeks copies of the "VETERANS LAND BOARD APPRAISAL REPORT," a document describing and stating the value of the tract of land that an individual veteran wishes to buy. One of these reports includes financial information under the "special remarks" section. We are asked to consider whether the veteran has a privacy interest in this information.

Section 3(a)(1) of article 6252-17a, V.T.C.S., the Texas Open Records Act, excepts from public disclosure information deemed confidential by constitutional or statutory law, or by judicial decision. The Supreme Court of Texas has recognized a common law right of privacy that prevents the disclosure of various kinds of highly personal information found in public records. Industrial Foundation of the South v. Texas Industrial Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977). 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. This office 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 No. 373 at 3.

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 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.

Id. at 3-4.

In particular cases, a requestor may demonstrate a public interest in access that will overcome the second requirement of the common law privacy test; 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 No. 373 at 4. The amount of the grant made to a specific recipient was not excepted from disclosure. Open Records Decision No. 385 (1983).

Open Records Decision No. 373 thus distinguishes 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," that the Open Records Act makes available to the public. Open Records Decision No. 385 (1983). We relied on this distinction in Open Records Decision No. 385, determining that a public hospital's accounts receivable showing patients' names and the amounts they owed were open to the public. In contrast, information on amounts deposited in an inmate's jail commissary account was also determined to be background financial information on the standard of Open Records Decision No. 373. Open Records Decision No. 396 (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. 481 (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).

The reasoning and conclusion of Open Records Decision No. 373 applies to the financial information in this case. The credit reports, financial statements, and financial information included on the county committee's report are excepted from disclosure by the common law right of privacy under section 3(a)(1) of the Open Records Act. You have not provided any information indicating that there is a public interest in access to background financial information in any of these files that would overcome the second prong of the privacy test. Credit reports and financial statements are therefore excepted from disclosure under the Open Records Act, as well as statements about a veteran's financial responsibility found on the county committee's report or on the "VETERANS LAND BOARD APPRAISAL REPORT."

The office has also determined that federal income tax returns submitted to a governmental body by an individual are excepted from public disclosure as information deemed confidential by judicial decisions protecting privacy. Attorney General Opinion H-1274 (1978). See Allen v. Humphreys, 559 S.W.2d 798 (Tex. 1977); Maresca v. Marks, 362 S.W.2d 299 (Tex. 1962) (confidential nature of income tax returns). The income tax return in the applicant's file is not available to the requestor, nor are the W-2 forms and W-2P forms, which report wages and pension benefits respectively.

The applicant is required to submit documents showing that his military service meets the eligibility requirements in section 161.001 of the Natural Resources Code. He may submit any combination of documents showing active duty dates, character of discharge, and home of record at his time of entry into the service. The Department of Defense: Report of Separation (form DD-214) is typically submitted.

An applicant for the Veterans Land Program, as of the date of filing his application, must not have been dishonorably discharged from the service. Nat. Res. Code § 161.001(7)(A). It presumably would be unusual for you to have loan files relating to an individual who has been dishonorably discharged. Since the question of public access to records in a loan file showing a dishonorable discharge appears to be hypothetical, we will not address it. If information about a specific applicant's separation from the military raises an issue of privacy, for example, medical information, you should submit it to us for a decision. See, e.g., Open Records Decision Nos. 262, 258 (1980).

We find no other authority suggesting that other kinds of military information in a typical applicant's file constitute information deemed confidential by a common law or constitutional right of privacy. See, e.g., Open Records Decision No. 169 (1977) (home addresses not confidential). Information of this nature about persons in active service is available from the Department of Defense under the federal Freedom of Information Act. 5 U.S.C. § 552a. Under the Freedom of Information Act, release of information in personnel records can be denied only when the release would be a "clearly unwarranted invasion of personal privacy." Id. § 552(b)(6). Regulations issued by the Secretary of Defense under the Freedom of Information Act and the Privacy Act of 1974, 5 U.S.C. § 552a, state that the following items in military personnel records normally may be disclosed without a clearly unwarranted invasion of the individual's personal privacy: name, rank, date of rank, gross salary,

duty assignments, duty status, source of commission, awards and decorations, and attendance at professional military schools. 32 C.F.R. § 286a.41(c)(2)(i).

The routine disclosure of this kind of information by the Department of Defense demonstrates that it does not constitute "highly intimate or embarrassing facts about the individual," such that a person of ordinary sensibilities would strongly object to its public disclosure. See Open Records Decision No. 373. Moreover, the military information required of applicants by the Veterans Land Board is analogous to information on the prior employment of public employees and applicants for public employment, which may be disclosed under the Open Records Act. See Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 273 (qualifications of candidates for university presidency), 298 (1981) (resumes of public employees); cf. Attorney General Opinion JM-831 (1987) (Texas Rehabilitation Commission may require job applicants to submit records, including military records).

Finally, we note that the applicant's personal appearance before the county committee may be waived for medical reasons if he submits a letter from his physician stating that he is unable to appear. If a copy of a physician's letter is included in the applicant's loan file, it should be reviewed to determine whether it is excepted from public disclosure by section 5.08 of article 4495b, V.T.C.S., the Medical Practice Act.

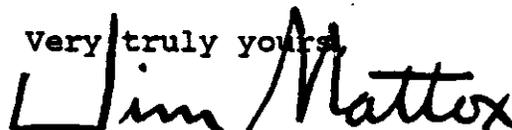
We have marked the documents that are excepted from public disclosure. The remaining documents are open to the public.

S U M M A R Y

Federal tax returns, tax return information, and background financial information included in the loan file of a participant in the Veterans Land Program are protected from public disclosure under section 3(a)(1) of the Open Records Act, article 6252-17a, V.T.C.S., by a common law right of privacy. The reports of the county committees are confidential to the extent they contain financial information about an applicant. Whether there is a sufficient public interest in the financial information in particular files to justify its disclosure must be decided on a case-by-case basis. In the

usual case, information in federal military records included in these files is available to the public. The Veterans Land Board does not seek to withhold copies of the contract of sale, the warranty deed, title insurance information, purchase vouchers, correspondence it has sent to the applicants, or tracking documents prepared by its employees.

Very truly yours,



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