



**THE ATTORNEY GENERAL
OF TEXAS**

February 15, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Joe L. McCormick
Texas Guaranteed
Student Loan Corporation
P. O. Box 15996
Austin, Texas 78761-5996

Dear Mr. McCormick:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5423; this decision is OR89-55.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You received a request for all program review reports and a list of all schools and lenders that have been limited, suspended, or terminated from the guaranteed student loan program. You assert that the information is exempt from required public disclosure under section 3(a)(4) of the act.

Section 3(a)(4) protects "information which, if released, would give advantage to competitors or bidders." This provision is most often invoked to except information submitted to a governmental body as part of a bid or similar proposal, but it is applicable when it is shown that specific actual or potential harm in a particular competitive situation would result from release of the information. A general allegation or a remote possibility that an unknown competitor might gain an advantage by disclosure is not sufficient to invoke section 3(a)(4). Open Records Decision No. 463 (1987).

Your letter does not show how release of the information in this instance will cause specific harm in a particular competitive situation. The representative samples of the records from which the requested information will be drawn document financial institutions' noncompliance with TGSLC policies or applicable federal guidelines and actions taken by the TGSLC against various educational institutions participating in the Texas Guaranteed Student Loan Program. They do not themselves show that any competitive situation exists as to require the application of section 3(a)(4).

One of the samples you submitted is a list of borrowers whose accounts with a particular financial institution were delinquent at the time the list was compiled. The list gives the name, address, home telephone number, social security number, and employment status of the borrower. Open Records Decision No. 480 (1987) concluded that the names, addresses and home telephone numbers of persons who have defaulted on loans guaranteed by the Texas Guaranteed Student Loan Corporation are subject to disclosure under the Open Records Act.

It has also come to our attention that your request for this decision may not have been submitted within ten days from your receipt of the written request for the information under consideration, as required by section 7(a) of the Open Records Act. You have not supplied us with a copy of the request for information. Consequently, we are unable to determine the validity of this claim. In any event, it is unnecessary to decide this issue, since we conclude that none of the requested information is excepted from disclosure under the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. You must provide the person requesting the information with a copy of this letter ruling. If you have questions about this ruling, please refer to OR89-55.

Yours very truly,

Open Government Section
of the Opinion Committee
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of the Opinion Committee
Prepared by Patricia Barnhard
Assistant Attorney General

PB/bc

Ref.: ID# 5423
ID# 5305
ID# 5572

Mr. Joe L. McCormick
February 15, 1989
Page 3

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