



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 15, 1989

Mr. Ramon Vela
Attorney for the City of Weslaco
P. O. Box 130
Weslaco, Texas 78596

Dear Mr. Vela:

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# 6724; this decision is OR89-252.

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.

The city of Weslaco received a request for all documents submitted to the City Commission by a company and its principals in support of the company's application for an interim loan of \$100,000.00 out of a revolving loan account made available to the city through Texas Department of Commerce funds. Included in the documentation were the personal financial statements of the president, vice president and partners of the company; Uniform Commercial Code Financing Statements covering both the company's inventory and a prototype home owned by the company; security agreements executed by the company's president and vice-president using the prototype home and the company's equipment as collateral; and a \$100,000.00 promissory note secured by security agreement executed by the president and vice president of the company.

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We note that in your communication enclosing the documents the city wishes to withhold, you have not cited any exception to disclosure under the Act that you believe applies to the information sought. Therefore any exceptions that might apply are waived. This office will, however, invoke section 3(a)(1) of the act, which protects information deemed confidential by constitutional or statutory law or by judicial decision, when necessary to protect third party interests.

Section 3(a)(1) protects from required disclosure "information deemed confidential by law, either Constitutional, statutory or by judicial decision." A privacy interest in the public disclosure of private facts was recognized in Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976) cert denied, 430 U.S. 930 (1977). In that case, the test articulated was whether information contained highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and, if so, whether the information would be of any legitimate public concern. Id. at 683-685. The public disclosure of private facts concerning an individual is not required if the public has no legitimate and proper concern with the information. See Open Records Decision No. 455 (1987). Personal financial information may invoke a disclosural privacy interest. See Open Records Decision No. 480 (1987); 455 (1987). Special circumstances implicating a legitimate public interest in the information may outweigh an individual's privacy interest. See Open Records Decision No. 373 (1983). For example, we have held that certain information in student loan records was not protected by any disclosural privacy interest because the records involved loans obtained through a public non-profit corporation backed by public funds such that any common-law privacy interest was outweighed by the public's right to be apprised of the manner in which public funds are being handled. See Open Records Decision No. 480. See also Open Records Decision No. 194 (1978). On the other hand, loan application information required by a city housing rehabilitation program which revealed applicants' sources of income, salary, mortgage payment assets, and other detailed personal financial information, while satisfying the first part of the test, was held not to satisfy the second part of the test because, absent special circumstances, it was not information of sufficient or legitimate concern to the public. Open Records Decision No. 373 (1983).

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Regarding the information at issue here, the personal financial information contained in the personal financial statements of the officers and partners of the corporation are sufficiently detailed concerning income, assets, debts, mortgage payments and other data similar to the information discussed in Open Records Decision No. 373 to give rise to a protectable privacy interest. However, this interest is outweighed by a legitimate public interest in the use of public money loaned for private purposes. We note that the applicant for the loan here is a company backed by the personal financial resources of its principals. Their financial status and ability to guarantee repayment of a loan of public funds is unquestionably of legitimate and substantial public interest. Any privacy interests they may have is outweighed by a public interest in the expenditure and repayment of public money. See Apodaca v. Montes, 606 S.W.2d 734 (Tex. Civ. App. - El Paso 1980, no writ).

For these reasons, none of the information you have submitted falls within the protection of §3(a)(1); it must be released. As stated, any other exceptions that you have not raised are waived. 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. If you have questions about this ruling, please refer to OR89-252.

Yours very truly,

*Open Government Section
of the Opinion Committee*
Open Government Section *DN*
of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

DAN/bc

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