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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

June 11, 1991

Ms. Mary Ann Courter
Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR91-270

Dear Ms. Courter:

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# 11717.

You have received a request seeking the following information regarding four named officers of the Texas Department of Public Safety who were killed in the line of duty:¹

¹In Open Records Decision No. 432 (1985), this office was asked whether negatives of photographs taken by police officers at the scene of an accident that resulted in a fatality are subject to disclosure under the Open Records Act. The custodian asserted that disclosure of the negatives would violate the decedent's family's right of privacy, either constitutional or common law, and thereby were excepted from disclosure under section 3(a)(1). This office disagreed. Relying on cases construing Texas and federal case law, the decision concluded that the right of privacy of the family of a decedent was not violated by the disclosure of the negatives:

Several important principles emerge from these cases. First, Texas law does not permit the family of a deceased person to maintain an action for the deceased's [sic] right of privacy since that right is personal. Since the right of privacy is personal, the relatives of a deceased person may maintain an action only for the invasion of *their* right of privacy. No such action will succeed, however, if the information that is published does not refer to them. (Emphasis added.)

At issue in the instant request is not whether the decedents' rights of privacy are implicated by the disclosure of the requested information; rather, at issue is whether the rights of privacy of the families of the decedents are implicated.

1. Did the officer leave a spouse?
2. Did the officer have children, and if so their ages?
3. Amount of life insurance paid by Department of Public Safety?
4. Was the salary continued for any length of time?
5. Were any health insurance benefits continued to the survivors after the death of the officer?

We understand you to assert that based upon Open Records Decision No. 545 (1990), the information sought is confidential financial and personal information that is excepted from disclosure under section 3(a)(1) of the act. That section excepts from required public disclosure:

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.²

²We note that article 6228f, V.T.C.S., which governs the granting of death benefits to the surviving spouse and dependents, including minor children, of a peace officer killed in the line of duty, contains no provision making information confidential. However, section 4 of article 6228f, V.T.C.S., provides that the act shall be administered by the State Board of Trustees of the Employees Retirement System of Texas. Section 815.503 of the Government Code governs the records of members of the system and provides the following:

Records of members and beneficiaries under retirement plans administered by the retirement system that are in the custody of the system are considered to be personnel records and are required to be treated as confidential information under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Because the request for information has been directed to the Department of Public Safety, rather than to the Employees Retirement System of Texas, we do not construe section 815.503 of the Government Code to control access to the records sought.

Section 3(a)(1) excepts from required public disclosure information made confidential by common-law privacy and by constitutional privacy.³ Information is deemed to fall within the ambit of common-law privacy if a two-part test is satisfied: (1) it must contain highly embarrassing facts about a person, the disclosure of which would be highly objectionable to a person of ordinary sensibilities; and (2) its disclosure is of no legitimate concern to the public. Open Records Decision Nos. 579, 562, 554 (1990).

We understand the first two questions to seek the names of the decedents' spouses and children and the ages of the children.⁴ With regard to the first two questions, this office was asked in Open Records Decision No. 373 (1983) whether information on a housing grant application regarding, *inter alia*, the applicant's family composition is excepted from disclosure. Therein, this office held:

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.

Id. at 4. Therefore, we conclude that you may not withhold the names of the decedents' spouses and children and the ages of the children.

We turn now to the third, fourth, and fifth questions. With regard to the first part of the test for common-law privacy, this office previously has concluded that

³The reach of disclosural privacy, one strand of constitutional privacy, includes matters related to marriage, procreation, contraception, family relationships, and child rearing and education. See *Fadjo v. Coon*, 633 F.2d 1172, 1175 (5th Cir. 1981). Because the information sought here involves the disbursement of death and insurance benefits and the expenditure of public funds, *i.e.* a public employee's financial relationship with the state, we conclude that constitutional privacy is not implicated.

⁴The Open Records Act does not require a governmental body to answer factual questions. Open Records Decision Nos. 555 (1990); 379 (1983). However, a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 (1990). In this instance, because the requestor has coupled questions with the identities of the decedents, information about whose families the requestor is seeking, we will construe the request as a proper one.

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.

Open Records Decision No. 373 (1983) at 3.

With regard to the second part of the test, this office has long held that the disclosure of personal financial information about an individual ordinarily is of no legitimate concern to the public, but that "special circumstances" may overcome the presumption and that a determination must be made on a case-by-case basis. Open Records Decision Nos. 545 (1990); 523 (1989); 385, 373 (1983). For example, this office has concluded that the amount of a debt to a public hospital, together with the names of debtors and dates of delinquency, is not excepted by common-law privacy. Open Records Decision No. 385 (1983). A city's utility bill ledgers are not confidential under common-law, because the public has an interest in knowing who owes money to a governmental body. Open Records Decision No. ; 443 (1986); *see also* Open Records Decision No. 480 (1987) (records regarding persons who default on student loans, though dealing with financial information, are not protected by common-law privacy because of the public interest in knowing who owes money to a governmental body). On the other hand, information about sums deposited to jail inmates' trust accounts and the total amount of such funds do not relate to the expenditure of public funds; in such a situation, the county sheriff acts merely as a trustee of the funds and, therefore, there is not a sufficient public concern with such information to overcome an inmate's right of privacy. Open Records Decision No. 396 (1983).

In Open Records Decision No. 545 (1990), the decision upon which you rely, this office concluded that a list of participants in the state's deferred compensation plan satisfied both parts of the test under common-law privacy and is excepted from disclosure under section 3(a)(1):

Whether a specific public employee is participating in the deferred compensation plan, whether or how much that employee is contributing to any specific vendor, and that employee's cumulative account balance with any specific vendor

are not matters of legitimate public concern. It is not apparent how the legitimate public interest in the conduct of public officials and employees in the administration of the deferred compensation plan is furthered by the release of such information in a way that could not be accomplished otherwise. Therefore, we conclude that the information in question satisfies the second part of the Industrial Foundation test.

Id. at 5.

In Open Records Decision No. 545, the information at issue involved financial matters that bore no relationship to the public:

Personal investment decisions appear to be of the kind of financial information that a person of ordinary sensibilities would object to having publicly disclosed. The fact that the person is a public employee making the investment decisions through a payroll deduction program would not bear on the person's feelings in the matter.

Id. at 3. The information at issue here, however, involves not financial matters that reflect personal investment decisions; rather, the information requested involves an employee's financial relationship with the state, information in which there necessarily is a public interest.

In Open Records Decision No. 523 (1989), this office discussed the distinction set forth in Open Records Decision No. 373 (1983) between personal background financial information, which is excepted from disclosure, and information involving an individual's financial relationship with the state. Therein, this office concluded:

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

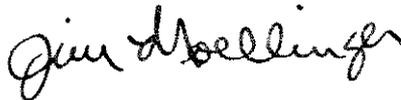
contrast, information on amounts deposited in an inmate's jail com-missary account was also determined to be background financial information on the standard of Open Records Decision No. 373. Open Records Decision No. 396 (1983). Subsequent decisions of this office analyze questions about the confidentiality 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).

Open Records Decision No. 523 (1989) at 4. We conclude that the information sought in the instant request involves an individual's relationship with the state, rather than an individual's personal background information.

We have considered the exception you claimed, specifically section 3(a)(1), and have reviewed the documents at issue. Previous determinations of this office, Open Records Decision Nos. 523 (1989) and 373 (1983), copies of which are enclosed, resolve your request. For this reason, you must release the requested information.

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 OR91-270.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/mc

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Enclosures: Open Records Decision No. 545 (1990)

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