



## Office of the Attorney General

State of Texas

August 12, 1992

DAN MORALES  
ATTORNEY GENERAL

Ms. Dorothy G. Palumbo  
Assistant City Attorney  
City of Garland  
P. O. Box 469002  
Garland, Texas 75046-9002

OR92-469

Dear Ms. Palumbo:

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# 16368.

You have received a request for information relating to the City of Garland's (the "city") Housing Assistance Program. Specifically, the requestor seeks

[a]ll file and supporting documentation for the following:

Section 8 Housing Certificates  
Section 8 Housing Vouchers  
Moderate Rehabilitation Loans  
Forgivable Loan Programs  
Rental Rehabilitation Loan Projects  
And All Supporting Documentation From 1984 To The Present.

The requestor advises that he does not seek "the identities of individual recipients of federal housing funds, but only documents concerning the amounts of monies disbursed in the programs." You do not object to release of information "relating to the grant process from [the Department of] Housing and Urban Development." You claim, however, that the remaining information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act and by the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552A.

We first address your contention that the city cannot reasonably identify the documents requested. You also assert that retrieval of the requested information would require the city to perform general research for the requestor. Although the request at issue here is broad, it is specific with regard to the type of information requested. When a governmental body is presented with a broad request for information, it may advise the requestor of the types of information available so that he may narrow his request if he so desires. Open Records Decision Nos. 563 at 7, 561 at 8-9 (1990). Whether or not the requestor in response narrows his request, the Open Records Act generally does not permit the custodian of records to consider either the cost or the method of supplying requested information. Open Records Decision No. 467 (1987) at 5.

The custodian may also require the requestor to post bond or prepay in cash the anticipated costs of retrieval as a condition precedent when the preparation of the requested information is unduly costly and reproduction would cause "undue hardship" if the costs were not paid. V.T.C.S. art. 6252-17a, § 11; Open Records Decision No. 467 at 6-7. If the custodian does not require the requestor to post bond or prepay in cash, the custodian may charge the requestor after the request has been fulfilled for costs authorized by section 9 of the act. *See generally* V.T.C.S. art. 6252-17a, § 9(a)(b); 1 T.A.C. §§ 111.61-.63 (copy enclosed). Furthermore, if the public information the requestor seeks is intertwined with confidential information, or if the records custodian must conduct an extensive physical search to sort out confidential records, the custodian may charge the requestor for materials, overhead, and labor necessary to delete or separate the confidential information. Open Records Decision No. 488 (1988).

We next address your claim that the requested information is excepted from required public disclosure by FOIA. FOIA, however, does not apply to records held by a state or local governmental body in Texas. Attorney General Opinion MW-95 (1979) at 2. You advise us that the requested information is in the possession of the City of Garland's Housing Assistance Program, a subdivision of a local governmental body in Texas. Accordingly, FOIA and its exceptions to disclosure do not apply to the information at issue here.

You also claim that the requested information is excepted from required public disclosure by the doctrines of common-law and constitutional privacy as incorporated by section 3(a)(1) into the Open Records Act. Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 3(a)(1) of the act by the Texas Supreme Court in

*Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* is of no legitimate concern to the public. In contrast, the constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4.

This office has held that the names of former residents of a public housing development are not excepted by constitutional or common-law privacy. Open Records Decision No. 318 (1982). This office has also held that common-law or constitutional privacy does not protect information about the family composition, employment, age, and ethnic origin of applicants for housing rehabilitation grants. Open Records Decision No. 373 (1983) (copy enclosed). In that decision, this office also concluded:

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.

*Id.* at 3. Although financial dealings between an individual and governmental bodies are matters of public interest and are ordinarily not within the protection of common-law or constitutional privacy, Open Records Decision No. 590 (1991) at 3, information about an individual's financial status and past financial history is sometimes excepted under section 3(a)(1). Open Records Decision No. 373 noted that, while in certain instances there might not be an adequate demonstration of legitimate public interest to justify the invasion of the applicant's privacy, a requestor might, by showing "special circumstances," overcome the presumption that there is no sufficient legitimate public interest. Accordingly, this decision held that the availability of "personal financial information" should be addressed on a case-by-case basis. See also Open Records Decision Nos. 600 (1992); 545 (1990) (excepting information relating to an employee's participation in a deferred compensation plan). Also, information about a person's illnesses, operations, physical handicaps, or prescription medications is generally excepted by common-law or constitutional

privacy and therefore excepted under section 3(a)(1) of the Open Records Act. Open Records Decision No. 455 (1987).

In Open Records Letter OR92-190 (1992) (copy enclosed), this office addressed the availability of waiting lists and individual applications for Section 8 low-rent public housing programs administered by the Dallas Housing Authority. The information at issue in that ruling included the names, addresses, telephone numbers, race, preferences afforded pursuant to federal regulations, income, veteran status, present housing condition code, current rent paid, eligibility date, information on disability or elderly status, financial information, birth certificates, marriage licenses, medical information, rental history, social security numbers, criminal records, race information, family composition, and other information needed to evaluate the applicant's eligibility for housing assistance. In Open Records Letter OR92-190, we concluded that information reflecting the applicants' personal finances, including income, source of income, rental history, current rent paid, and information about applicants' illnesses, operations, physical handicaps, or prescription medications met the test for common-law privacy and were excepted from required public disclosure under section 3(a)(1) of the Open Records Act. The remaining information, however, including the names, social security numbers, addresses, family composition, marital status, employment, age, elderly status, present housing condition code, telephone numbers, veteran status, preferences afforded pursuant to federal regulations, ethnic origin, and eligibility date of persons listed on the applicant waiting list for public housing, was deemed not intimate or embarrassing and was thus not excepted by common-law privacy. In addition, we determined that the information was not protected by constitutional privacy and was thus subject to public disclosure.

The information that you have submitted to us for review includes some of the same types of information addressed in Open Records Letter OR92-190 and in other decisions of this office. Accordingly, you must withhold the requested information under section 3(a)(1) to the extent that it includes information reflecting the applicants' personal finances, including income, source of income, rental history, current rent paid, and information about applicants' illnesses,

operations, physical handicaps, or prescription medications.<sup>1</sup> However, the information submitted to us for review also includes deeds, insurance and tax information, home repair contracts, home repair appraisals and inspectors' reports, contractor information, bidding information, and various other documents, records, memorandums, and agreements. You have not indicated how any of this information implicates the privacy rights of third parties. The Open Records Act places on the custodian of public records the burden of establishing that records are exempted from public disclosure. Attorney General Opinion H-436 (1974). Without an explanation as to how this information implicates the privacy rights of third parties, your request for an open records decision remains incomplete. Accordingly, we find that you have not met your burden and must release all remaining information unless it is made confidential by law. While we cannot direct you to disclose information that is made confidential by law, neither can we provide you with an opinion upon which you can rely as an affirmative defense to prosecution under section 10(c)(1) of the Open Records Act. If, on the other hand, you furnish within 7 days of receipt of this letter a brief detailing your arguments under section 3(a)(1) and indicate by marking what information is at issue, we can provide you with a determination under section 7 of the Open Records Act with respect to the remaining information.

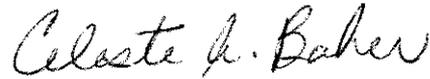
Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

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<sup>1</sup>We note as well that the availability of other information at issue in Open Records Letter OR92-190 was governed by statute, *e.g.*, social security benefit information, 42 U.S.C. § 1306, federal income tax information, 26 U.S.C. § 7213, veterans administration benefit information, 38 U.S.C. § 3301, and consumer credit reports, 15 U.S.C. § 1681b. In addition, the availability of some criminal history record information was governed by federal regulations. *See* 28 C.F.R. § 20.20(b); *see also* Open Records Decision Nos. 565 (1990); 342 (1982). Please note as well that only the Bureau of Vital Statistics may withhold birth certificates from required public disclosure under the Open Records Act. *See* art. 6252-17a, V.T.C.S., § 3(a)(15); *see also* Open Records Decision No. 338 (1982).

a published open records decision. If you have questions about this ruling, please refer to OR92-469.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/GCK/lmm

Enclosures: Open Records Decision No. 373  
Open Records Letter OR92-190  
1 T.A.C. §§ 111.61-.63

Ref.: ID# 16368  
ID# 16398  
ID# 16599  
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