



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 18, 1993

Mr. James P. Grissom
City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR93-069

Dear Mr. Grissom:

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# 17895.

The City of Harlingen [the city] received an open records request for all applications for permits to build aircraft storage hangars at the Harlingen airport. The city received one such application and seeks to withhold two portions of it under sections 3(a)(1), 3(a)(4) and 3(a)(10) of the Open Records Act. The information in the application which you seek to withhold includes: item 2 (financial information about the applicant's assets and liabilities, and an income statement), and item 3 (pro forma income statements detailing the T-Hangars rental income potential and rate of return).

You contend that section 3(a)(1) of the Open Records Act applies to the financial statements. Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The exception applies to information made confidential under the common-law tort of invasion of privacy through the disclosure of private facts. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977). A violation of the tort occurs only if the information 1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and 2) is of no legitimate concern to the public. *Id.*

This office has held that personal financial information relating to an individual ordinarily satisfies the first requirement of the test for common-law privacy. Open Records Decision Nos. 590 (1991); 545 (1990); 523 (1989). Whether the second

requirement that the information be of no legitimate public concern is satisfied depends on the role the information plays in the interaction between the individual and the governmental body. Open Records Decision No. 600 (1992). The public has a legitimate interest in the facts regarding a financial transaction between an individual and a governmental body. *See id.* In contrast, background financial information furnished to a public body about an individual is not of legitimate concern to the public. *See id.*

Item 2 is background financial information about the applicant; its disclosure would violate the applicant's right to privacy. *See* Open Records Decision No. 523. We conclude that you must withhold item 2 based on section 3(a)(1) of the Open Records Act.

Section 3(a)(4) permits a governmental body to withhold from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect a governmental body's interest in obtaining more favorable offers from competitors for a governmental contract or benefit, such as in a competitive bidding situation. Open Records Decision No. 592 (1991). The exception does not ordinarily except bids from disclosure after the bidding has been completed and the contract awarded. Open Records Decision No. 541 (1990). This office has also stated that where a single individual seeks a contract, there are no "competitors," and section 3(a)(4) is inapplicable. Open Records Decision No. 331 (1982).

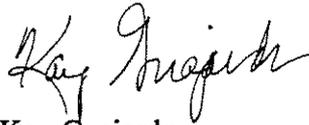
You inform us that the city has presented the applicant a draft offer of lease, but that the applicant has not indicated his acceptance of that offer. Thus, you say, an opportunity exists for competitors to obtain the information and submit a competing proposal to the disadvantage of the sole bidder.

Since only one person has applied for the lease, there are no "competitors" who can gain an advantage from the disclosure of the requested information. Prior decisions of this office have stated that section 3(a)(4) does not apply when there is a remote possibility that an unknown competitor will gain an advantage by disclosure of the information. *See* Open Records Decision Nos. 541 (1990); 520 (1989); 331 (1982). Moreover, the fact that the city has made an offer to the applicant indicates that the competition for the lease has ceased. We therefore conclude that the city has no competitive interests which section 3(a)(4) protects.

You assert section 3(a)(10) of the Open Records Act as an exception to the disclosure of the requested information. You do not explain why that exception applies; thus, you may not withhold the requested information based on section 3(a)(10). You must release the information in item 3 of the application.

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 OR93-069.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Opinion Committee

KHG/mc

Ref.: ID# 17895
ID# 18057

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Enclosures: submitted documents