



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 2, 1993

Mr. Carl J. Shahady
Agency Attorney
Texas Municipal Power Agency
P.O. Box 7000
Bryan, Texas 77805

OR93-403

Dear Mr. Shahady:

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# 20181.

The Texas Municipal Power Agency (the "agency") has received a request for information relating to agency bondholders. Specifically, the requestor seeks "a listing of all registered bond holders for the Agency, for all outstanding issues." You seek to withhold the requested information under sections 3(a)(1) and 3(a)(10) of the Open Records Act.

You argue that the requested information constitutes personal financial information that is excepted from disclosure by a right of privacy incorporated into section 3(a)(1) of 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 S. 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* it is of no legitimate concern to the public. Open Records Decision No. 590 (1991) summarized prior decisions of this office on the disclosure of personal financial information:

Prior decisions concerning disclosure of financial matters have made a distinction between "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." Open Records Decision Nos. 545 (1990); 523 (1989); 385 (1983). This office has found information in the first category to be protected by privacy law, but has found information in the latter to be available to the public.

Open Records Decision No. 590 at 3. The information submitted to us for review constitutes basic facts about particular financial transactions between individuals and a public body. Accordingly, this information is not excepted from disclosure by a right of common law privacy.

You also argue that the requested information is protected from public disclosure by a right of privacy under the Texas Constitution. In *Texas State Employees Union v. Texas Dep't of Mental Health & Mental Retardation*, 746 S.W.2d 203 (Tex. 1987) ("TSEU"), the Texas Supreme Court affirmed a right of privacy under the Texas Constitution derived from the prohibition under article I, section 9, against "all unreasonable seizures and searches," holding that the right of privacy can "yield only when the government can demonstrate that an intrusion is reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means." The court struck down a state policy requiring state employees to submit to polygraph examinations. See also Attorney General Opinion JM-1274 (1990) (mandatory urinalysis of county employees violation of Texas constitutional privacy guarantee). Here, however, a member of the public seeks information lawfully in the possession of a governmental body. There is no intrusion like a search or seizure at issue here; thus, the right to privacy articulated in TSEU is inapplicable. Accordingly, we conclude that the requested information may not be withheld from required public disclosure under the right to privacy articulated in TSEU.

Section 3(a)(1) also incorporates the right of privacy guaranteed by the United States Constitution. Constitutional privacy protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 at 4. The first interest applies to the traditional "zones of privacy," *i.e.*, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the private interest against the public interest. Open Records Decision No. 478 at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985)). The information at issue does not fall within any of the "zones of privacy," nor does it involve the most intimate of human affairs. See Open Records Decision No. 590 at 3. Accordingly, we conclude that it is not protected by constitutional privacy and thus may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

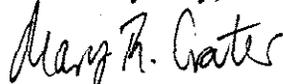
You also claim that the requested information is excepted from required public disclosure by section 3(a)(10) of the Open Records Act. Section 3(a)(10) excepts from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or

confidential by statute or judicial decision. You contend that the requested information constitutes commercial or financial information.¹ In Open Records Decision No. 592 (1991), this office held that "[i]n order to be excepted from required public disclosure under section 3(a)(10) of the Open Records Act, 'commercial or financial information obtained from a person' must be 'privileged or confidential' under the common or statutory law of Texas." *Id.* at 9 (citing the summary). When an agency or company fails to provide relevant information regarding factors necessary to make a section 3(a)(10) claim, there is no basis to withhold the information under section 3(a)(10). *See* Open Records Decision No. 402 (1983).

You claim that the requested information is protected under the second branch of section 3(a)(10) because it constitutes personal financial information that is protected by common law privacy. You provide us with no other basis for concluding that the requested information is privileged or confidential under the common or statutory law of Texas, and we are aware of no law that makes it so. As we conclude above, the requested information is not protected by common law or federal or state constitutional privacy. Therefore, we conclude that the requested information may not be withheld from required public disclosure under the "commercial or financial" information branch of section 3(a)(10). Accordingly, the requested information must be released in its entirety.

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 contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GCK/jmn

Enclosures: Open Records Letter OR93-297

Ref.: ID# 20181

¹You do not claim that the requested information constitutes trade secrets.

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