



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 30, 1993

Ms. Dori Wind  
Division Chief  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR93-723

Dear Ms. Wind:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552.<sup>1</sup> Your request was assigned ID# 21672.

The Harris County Hospital District (the "hospital district") has received a request for information relating to a certain hospital district services applicant. Specifically, the requestor seeks the applicant's "application for a Gold Card or any other document that would have a declaration of income and resources." You have submitted to us for review the applicant's "Patient Registration Form." You seek to withhold this document under sections 552.101 and 552.110 of the act.<sup>2</sup>

You argue that the requested information constitutes personal financial information that is excepted from disclosure by a right of privacy incorporated into section 552.101 of the Government Code. A governmental body may withhold information from required public disclosure under common-law privacy if it meets the criteria that the Supreme Court of Texas articulated for section 552.101 in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex.

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<sup>1</sup>The Seventy-Third Legislature repealed V.T.C.S. article 6252-17a, the statutory predecessor to chapter 552 of the Government Code. Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup>Because you do not comment on the requested Gold Card Application, we presume that either it is not in the hospital district's possession or the hospital district will release it to the requestor.

1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, a governmental body may withhold information on common-law privacy grounds only if it is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. of the S.*, 540 S.W.2d at 685. In Open Records Decision No. 590 (1991) at 3 this office 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.

The information submitted to us for review constitutes basic facts about particular financial transactions between individuals and a public body. Accordingly, a common-law right of privacy does not except this information from disclosure.

You also claim that section 552.110 of the Government Code excepts the requested information from required public disclosure. Section 552.110 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.<sup>3</sup> In Open Records Decision No. 592 (1991) at 9 this office held that "to be excepted from required public disclosure under section [552.110] 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." When an agency or company fails to provide relevant information regarding factors necessary to make a section 552.110 claim, this office has no basis for determining that the agency may withhold the information under section 552.110. See Open Records Decision No. 402 (1983) at 3.

You claim that the requested information is protected under the second branch of section 552.110 because it constitutes personal financial information that common-law

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<sup>3</sup>You do not claim that the requested information constitutes trade secrets.

privacy protects.<sup>4</sup> 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 unaware of any law that makes it so.<sup>5</sup> We therefore affirm our prior conclusion that common-law privacy does not protect the requested information. Accordingly, the hospital district may not withhold the requested information under the "commercial or financial" information branch of section 552.110. The hospital district must release the requested information 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,



Kimberly K. Oltrogge  
Assistant Attorney General  
Open Government Section

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Enclosures: Open Records Letter OR93-297

Ref.: ID# 21672

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<sup>4</sup>You also assert that the requested information is excepted because its release would impair the county's ability to obtain the information in the future. Past open records decisions applying section 552.110 to commercial information have relied on federal cases ruling on exemption 4 of the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552. *See National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). However, in Open Records Decision No. 592 (1991) this office reexamined its reliance on federal interpretations of exemption 4 of FOIA. Consequently, this office overruled prior open records decisions exempting commercial and financial information pursuant to federal interpretations of exemption 4. Open Records Decision No. 592 at 7. Unless the information requested constitutes trade secrets or is "privileged or confidential" under the common or statutory law of Texas, a governmental body cannot withhold it under section 552.110. *See id.* at 7-8.

<sup>5</sup>You advise us that "some of the information collected during the eligibility process is for eligibility for Medicaid and may not be subject to disclosure under federal regulations." You have not identified any federal statutes or regulations that make information collected for medicaid eligibility purposes confidential, nor are we aware of any.

cc: Ms. Lora B. Friedman  
5550 N. Braeswood, #48  
Houston, Texas 77096  
(w/o enclosures)