



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Ms. Sedora Jefferson
General Counsel
Texas Department of Commerce
P.O. Box 12728
Austin, Texas 78711-2728

OR94-653

Dear Ms. Jefferson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 22760.

The Texas Department of Commerce (the "department") received a request for "a copy of the financing commitment issued to Stephens Diversified Leasing, Inc., on behalf of Texas State Optical, Inc., in connection with the Hurst franchise." You explain that the documents relate to a financing agreement guaranteed in part by the department under the Texas Rural Economic Development Loan Fund. You have submitted two documents for our review and contend that sections 552.101, 552.104 and 552.110 of the Government Code except the information from required public disclosure. We address your arguments in turn.

You contend that the common-law privacy aspect of section 552.101 protects the documents from disclosure because they contain financial information about the entities involved in the transaction with the department. Under section 552.101, information may be withheld on the basis of common-law privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy primarily protects the feelings and sensibilities of human beings, not business, commercial, or property interests. Open Records Decision No. 192 (1978) at 4. Although the records submitted for our review contain some financial information, it relates solely to the partnership that has secured the loan guaranteed in part by the department. Neither of the documents contains personal financial information concerning

any of the individuals involved in the transaction. Moreover, common-law privacy does not protect the basic facts of a financial transaction between an individual and a governmental body. Open Records Decision No. 523 (1989) at 4. Therefore, you may not withhold the documents under the doctrine of common-law privacy as incorporated into section 552.101 of the Government Code.

You also argue that section 552.101 excepts the documents from disclosure under statutory provisions that apply to other loan programs administered by the department. You argue that the "[l]egislature inadvertently failed to include a confidentiality provision in the rural loan program, because it believed that the program was already covered through one of the six confidentiality provisions that were put into other Commerce loan programs." As a general rule, statutory confidentiality under section 552.101 requires express language making particular information confidential. Open Records Decision No. 478 (1987). We have examined the confidentiality provisions on which you rely and conclude that none of the provisions prohibit the release of the requested records. These records specifically relate to funds administered through the Texas Rural Economic Development Act, Gov't Code §§ 481.081 - .093, which does not contain a confidentiality provision. On the other hand, each program you have cited has its own confidentiality provision that applies only to information obtained under that program. See Gov't Code §§ 481.047 (relating to Texas Exporters Loan Fund), .074 (relating to Development Corporation Act), .225 (relating to Texas Product Development Fund), .296 (relating to Product Commercialization Fund), .240 (relating to Small Business Incubator Program), .307 (relating to Small Business Innovation Research Program). Therefore, you may not withhold the requested records pursuant to section 552.101 of the Government Code.

You also seek to withhold the documents under section 552.104 because release of the information would give "the competitors of Texas State Optical, Hurst, Texas an advantage against it, because the competitors would know the terms of the loan." Section 552.104 excepts from disclosure "information, that if released, would give advantage to a competitor or bidder." Generally, the purpose of section 552.104 is to protect the interests of a governmental body and not the interest of private parties that submit information to the government. Open Records Decision No. 592 (1991) at 8. In addition, section 552.104 protects a governmental body's interests in preserving the integrity of the competitive bidding process in which third parties are bidding to contract with the government. *Id.* You have not explained, nor is it apparent on the face of the documents, that a competitive bidding situation exists with regard to this information or what interest if any the department has in withholding it under section 552.104. Therefore, you may not withhold the documents under section 552.104 of the Government Code.

You next argue that section 552.110 protects the information from disclosure, apparently on the same basis as your argument under section 552.104, that release of the information would give "the competitors of Texas State Optical, Hurst, Texas an advantage against it." Section 552.110 excepts from public disclosure either trade secrets or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 592 at 7, this

office expressly overruled previous decisions that applied a test under section 552.110 which determined whether release of information would cause substantial harm to the competitive position of the entity from which it was obtained. Commercial or financial information is excepted from disclosure only if it is deemed confidential by the common or statutory law of Texas. *Id.* As discussed above, the requested information is not confidential by statute, nor under the doctrine of common-law privacy. Therefore, section 552.110 does not except the information from disclosure and you must release the 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 our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/rho

Ref.: ID# 22760

Enclosures: Submitted documents

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(w/o enclosures)