



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

December 28, 1990

Honorable Patrick J. Fleming Open Records Decision No. 583
County Attorney
Parker County Courthouse
Weatherford, Texas 76086

Re: Whether the names and addresses of purchasers of automobile license plates are excepted from disclosure under the Open Records Act, article 6252-17a, V.T.C.S. (RQ-2095)

Dear Mr. Fleming:

The Parker County tax assessor-collector has received a request for the names and addresses of persons who have purchased certain automobile license plates through her office. You ask whether this information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S.

Article 6675a-17A(a), V.T.C.S., provides:

The State Department of Highways and Public Transportation or a county may not release to any person information contained in vehicle registration records in response to a telephone inquiry by license number. The department or a county may release information only if: (1) the person first submits the request in writing, including the person's name and address and stating that the use of the information is for a lawful and legitimate purpose; or (2) the person enters into a written service agreement with the department or the county to receive the information.

Your position is that article 6675a-17A controls the release of the requested information to the exclusion of the Open Records Act, and that the use of the word "may" in article 6675-17A provides the county with discretion to withhold the information should it choose to do so. You further assert that if the Open Records Act is controlling, the requested information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(4) of the Open Records Act.

As you point out, article 6675a-17A specifically concerns the release of names and addresses from vehicle registration records while article 6252-17a is a statute concerning the release of government information generally. You cite section 311.026 of the Government Code, a provision of the Code Construction Act, for the proposition that a more specific statute prevails over the provisions of a general statute. The Code Construction Act applies only to codes enacted as part of the statutory revision program. Gov't Code § 311.002. As neither article 6675a-17A nor article 6252-17a is part of such a code, the Code Construction Act is not, by its terms, applicable to either statute. Nevertheless, section 311.026 of the Government Code codifies a rule of statutory construction that has been recognized and applied by the courts of this state for many years. See, e.g., Sam Bassett Lumber Co. v. City of Houston, 198 S.W.2d 879, 881 (Tex. 1947). In such a case the specific statute stands as an exception or qualification to the more general. Id. However, this principle is only applicable where it is necessary to reconcile the statutes, because the rules of statutory construction require that statutes that deal with the same subject be construed so that they harmonize. Powell v. State, 632 S.W.2d 842, 844 (Tex. App. - Houston [14th Dist.] 1982, no pet.) (citing Cuellar v. State, 521 S.W.2d 277 (Tex. Crim. App. 1975)). Moreover, a legislative enactment covering a subject dealt with by an older law, but not repealing that law, should be harmonized whenever possible with its predecessor in such a manner as to give effect to both. Acker v. Texas Water Comm'n, 790 S.W.2d 299 (Tex. 1990).

The State Department of Highways and Public Transportation submitted comments for our consideration in resolving this matter. We are advised that that agency does not interpret the use of the word "may" as providing discretion to refuse to release the information in question. The department states:

It is our contention that a reasoned reading of the statute makes clear that this "may" must be read in context with the rest of the language quoted. . . . [T]he SDHPT or the county "may" release the requisite information only after the requestor fulfills certain requirements, and, when that is done, the SDHPT or the county is then required to release the information.

Our reading of article 6675a-17A is in accord with that of the State Department of Highways and Public Transportation. Such a reading harmonizes article 6675a-17A with the Open Records Act. Article 6675a-17A does not provide

confidentiality for motor vehicle registration information. Rather, it provides that a request for such information must follow certain forms and relate to a lawful purpose. In the absence of language in article 6675a-17A making motor vehicle registration information confidential, the Open Records Act removes any question of discretion to withhold such information. Accordingly, when a written request containing the information specified by article 6675a-17A(a) is received, the requested information must be released unless the information is within an exception enumerated in section 3(a) of the Open Records Act.

In this case, the requestor has made written application to the tax assessor-collector for the requested information stating his name and address. The request states, in part:

As you recall, I have been in your office several times within the past 90 days requesting your assistance in the securing of names and addresses of certain owners of vehicles whose license plates numbers I would submit to you. I explained in detail why I need this information and that I could save each person several dollars each year by helping them reduce their costs for drinking water.

You advise that the requestor wishes to identify potential customers for his product so that he may solicit their business. This is a perfectly legal endeavor. While the requestor's recitation in his written request does not use the words "lawful and legitimate purpose," we find, as a matter of law, that it sufficiently identifies his purpose as lawful and legitimate and complies with article 6675a-17A.1

You assert that the tax assessor-collector

merely has possession and not 'ownership of the information.' The names and addresses in question do have some value and are the property of those private individuals purchasing license plates.

1. In our opinion, the requestor need state only that his use of the information is for "a lawful and legitimate purpose."

Presumably, it is your contention that the requested information is not public information within the meaning of section 3(a) of the Open Records Act. Section 3(a) provides, in part:

All information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information . . . is public information. (Emphasis added.)

We find this contention cannot be supported. The state requires vehicle registration for its tax and police functions. Persons required to register their vehicles under the law must provide certain information to the state. We do not think it can be meaningfully asserted that the state does not "own" its motor vehicle registration records, or that the ownership of the information therein is separate. You provide no authority to support this theory, and we find none. At any rate it cannot be gainsaid that the county has "access" to the requested information.

You assert that the requested information is excepted from public disclosure by section 3(a)(1) as information deemed confidential by law. In this respect, you assert that disclosure of the requested information would constitute an invasion of the constitutional privacy rights of the individuals named therein. The constitutional right of privacy protects the most intimate aspects of human affairs. Ramie v. City of Hedwig Village, 765 F.2d 490, 492 (5th Cir. 1985); see also Klein Indep. School Dist. v. Mattox, 830 F.2d 576 (5th Cir. 1987) (school teacher's college transcripts not constitutionally protected from disclosure). We find no authority to support the contention that the names and addresses of persons registering motor vehicles are the kind of personal information protected from disclosure by the constitutional right to privacy. See Open Records Decision No. 455 (1987) and authorities cited therein.

Finally, you assert that because the requestor wishes access to the requested information in order to identify potential customers for his products, the requested information is excepted from release under section 3(a)(4) as "information which, if released, would give advantage to competitors and bidders." Section 3(a)(4) protects the interests of governmental bodies, generally, in competitive bidding situations. Open Records Decision No. 541 (1990). It does not restrict access to information such as that in question merely because it may have some commercial use to

the requestor. At any rate, the requested information is readily available to any competitors the requestor may have. We find that section 3(a)(4) is inapplicable to the requested information. The requested information must be released.

S U M M A R Y

When a written request for information in vehicle registration records containing the information specified by article 6675a-17A(a) is received, the requested information must be released unless the information is within an exception enumerated in section 3(a) of the Open Records Act.

Very truly yours,



J I M M A T T O X
Attorney General of Texas

MARY KELLER
First Assistant Attorney General

LOU MCCREARY
Executive Assistant Attorney General

JUDGE ZOLLIE STEAKLEY
Special Assistant Attorney General

RENEA HICKS
Special Assistant Attorney General

RICK GILPIN
Chairman, Opinion Committee

Prepared by John Steiner
Assistant Attorney General