



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1997

Mr. Brett Bray
Division Director
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR97-0432

Dear Mr. Bray:

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# 103233.

The Department of Transportation (the "department") received a request for access to the closed "lemon law" cases of the Texas Motor Vehicle Board¹ ("TMVB") and telephone bills and records pertaining to lemon law complaints. Two other similar requests were received by this office, namely ID# 33192 and ID# 34996 which we combined with this request. However the department seeks to withhold portions of the requested information based on section 552.101 of the Government Code. You enclose representative samples of the information the department seeks to withhold.²

One of the two pertinent provisions of the Texas Motor Vehicle Commission Code at issue provides for the establishment of a toll-free telephone number for providing information to persons who request information about a condition or defect forming the basis

¹The Texas Motor Vehicle Commission Code regulates motor vehicle manufacturers and franchised dealers and their dealings with purchasers of new motor vehicles. V.T.C.S. art. 4413(36). The Texas Department of Transportation's Texas Motor Vehicle Board, known as the Texas Motor Vehicle Commission until the 1991 consolidation of state transportation entities, has regulatory authority under the code. V.T.C.S. art. 4413(36a) § 1A.02.(2)(A). Acts 1991, 72nd 1st C.S., ch. 7 § 1A.02, at 237-238.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

for a TMVB executive order for the repurchase or replacement of a defective motor vehicle or motor vehicle part.³ The toll-free telephone number serves as an effective method to provide information to persons who request information. V.T.C.S. art. 4413(36) § 6.07(j). It is the telephone numbers of those accessing the toll-free number at issue in these requests. The TMVB asserts that this information is confidential as it constitutes "information filed" with the TMVB which is confidential under statute, specifically V.T.C.S. art. 4413(36) § 6.07(l) which provides:

Information *filed with the Board* under this section is not a public record and is not subject to release under the open records law, Chapter 552, Government Code, until the complaint is finally resolved by order of the Board.

An analysis of the history of § 6.07(l) of article 4413(36), V.T.C.S., introduced as S.B. 1139, reveals that this provision was added by the Seventy-fourth Legislature. Act of June 8, 1995, 74th Leg., R.S., ch. 357, § 22, 1995 Tex. Gen. Laws 2902. The legislative intent pertaining to S.B. 1139 provides that the purpose of S.B. 1139 was to transfer the regulation of independent dealers and others to the jurisdiction of the Texas Motor Vehicle Board as well as to clarify certain provisions pertinent to it. *See* S.J. of Tex., 74th Leg., R.S. 1135 (1995). The Senate Journal is silent on any specific commentary with regard to section 6.07(l) of article 4413(36) V.T.C.S. A review of the Senate Transportation Committee's bill analysis of S.B. 1139 reveals that the bill would, in addition to other provisions, "provide that information filed with the Motor Vehicle Board under the "lemon law" is not a public record and is not subject to release under the open records laws until the complaint is finally resolved." *See* HOUSE RESEARCH ORGANIZATION, BILL ANALYSIS, Tex. S.B. 1139, 74th Leg., R.S. (1995) at page. 2.

The supporters of the S.B. 1139 testified, in part, that "[it] would provide that information filed with the Motor Vehicle Board under the 'lemon law' is not a public record and is not subject to release under the open records act until a complaint is finally resolved. This change in the law would protect consumers from unsolicited communications from overzealous attorneys offering their services." *Id* at page 3. The opponents of S.B. 1139 testified, in part, to add that the bill "proposes to seal the records and complaints filed under the lemon laws until a very late stage in the process. Protecting consumers against unscrupulous automotive dealers and manufacturers is difficult enough without these records being sealed from public view. Such a step would assure that fewer consumers would be adequately represented in their attempts to resolve complaints about defective vehicles. Many experienced attorneys practicing in this area check the records to see who has filed a complaint so that they can offer professional assistance. Consumers also may want to use these records to see how many complaints have been filed against a particular dealer

³The TMVB executive director may issue, after due notice and process, an order to refund or to replace a motor vehicle's nonconformity or defect against a manufacturer, converter, or distributor. *See* V.T.C.S. art. 4413(36) § 6.07.

or manufacturer.” *Id.* at page 4. Despite the commentary by the bill’s supporters and opponents concerning confidentiality and the rationale underlying the process, the record is silent on the confidentiality of caller numbers to the toll-free telephone line. Additionally, a review of the legislative history of the bill does not reveal what the drafters considered encompassed by the phrase “information filed with the board.”

A statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one of which will carry out and other defeat such manifest object, it should receive the former construction. *Citizens Bank of Bryan v. First State Bank*, 580 S. 2d 344 (1979). The phrase “*information filed with the board*” is in the present context straightforward and unambiguous. Complaints for relief under the lemon law must be in writing and filed with the TMVB and may be in letter form or any other written format. *See* 16 T.A.C. § 107.2(a). The commencement of a proceeding means the filing of a complaint with the TMVB and the date of filing is determined by the date of receipt by the TMVB. *See* 16 T.A.C. §107.3(4).

Consequently, a person’s call to TMVB’s toll-free telephone number in order to obtain information about a condition or defect that was the basis for repurchase or replacement by TMVB is not recognized as a complaint pursuant to TMVB’s rules. *See id.* Additionally, TMVB acknowledges that not every call to the toll-free telephone line results in a complaint. It is assumed and generally presumed that statutory construction requires that every word in a statute is used for a purpose. *Jensen Assoc. Inc. V. Bullock*, 531 S.W.2d 593 (1975). Telephone bills and telephone records of the TMVB in performance of its day-to-day functions are not the type of information generally considered “legal” documents filed with the TMVB. *See Webster’s New Universal Unabridged Dictionary* 684 (2nd ed. 1983)(where the word file denoted as “to place ‘a legal document’ on public record, or among the records of a court). The common and ordinary meaning of the word is applied when the statutory definition is missing. *State v. Public Utility Commission of Texas*, 883 S.W.2d 190, 200 (Tex. 1994). Ultimately, exceptions to disclosure must be construed narrowly in favor of disclosure. Open Records Decision Nos. 511 (1988), 506 (1988). The 1-800 telephone numbers must be released.⁴

In combining the response to ID# 33192 and ID# 34996, we note that the TMVB need not comply with the request to allow the review of records concerning all lemon law packets and other correspondence being mailed on a daily basis as it is a continuing or standing request. Open Records Decision No. 465 (1987). Additionally, TMVB is not required to treat a request as embracing information prepared after the request was made. Open Records Decision No. 452 (1986). Some of the information requested concerns the recorded messages called in on the 1-800 toll-free telephone line but TMVB asserts such information is not kept or maintained by TMVB. The Open Records Act does not ordinarily

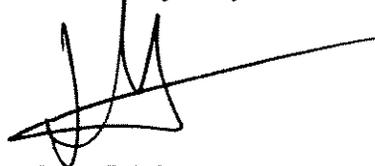
⁴We note that a general prohibition against release and use of certain personal information from state motor vehicle records, including telephone numbers, under 18 U.S.C. A. § 2721 et seq. will be effective after September 13, 1997 and is accompanied by provisions for penalties and civil action.

require a governmental body to take affirmative steps to create or obtain information that is not in its possession. Open Records Decision No. 534. (1989). Since TMVB contends it does not have recorded messages by persons requesting lemon law information or packets, or in the alternative, copies of other records showing this information, it is not required to take affirmative steps to create or obtain the information. *See id.* We do note that TMVB is not objecting to the release of the complaints on computer disk from the period of January 1, 1995 through April 30, 1995. We assume this information will be forwarded to the requestor.

A request is made for the telephone bills and records for the Consumer Affairs Section for the period starting September 16, 1994 to November 1, 1994 (including, but not limited to phone numbers 512-476-3618, 1-800-622-8682 and 512-476-8042. TMVB in its April 24, 1995 correspondence, claims it is not the custodian of this information.⁵ It does not forward to this office any responsive documents pertaining to this particular request. But we note that the requestor in his June 20, 1995 correspondence indicates that the requestor has forwarded this particular request on to the Information Services Division so we need not address this issue.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID#s 103233, 34996, 33192

Enclosures: Submitted documents

⁵"Custody" of records does not require the element of manual possession. Attorney General Opinion JM-1250 (1990). The fact that a request for a public record might be more appropriately directed to a different governmental body does not mean that it can be dismissed by a governmental body which actually possesses the information. Attorney General Opinion JM-266 (1984).

cc: Mr. Mark Allen Land
O'Connell, Van Shellenbeck & Land
10313 Lake Creek Parkway, Suite 200
Austin, Texas 78750
(w/o enclosures)