



October 22, 2001

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

OR2001-4160A

Dear Mr. Bray:

You ask this office to re-examine Open Records Letter No. 2001-4160 (2001) and whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155263.

The Texas Department of Transportation (the "department") received a request for a particular license application submitted to the department. In your original request for a decision in this matter, you claimed that some of the requested information might contain proprietary information protected from disclosure under section 552.101 of the Government Code. You did not, however, mark the submitted file to indicate those documents you considered to be potentially confidential. Instead, you submitted the entire application file and requested that this office advise you "whether the requested information is exempt from disclosure or is subject to disclosure under the Texas Public Information Act."<sup>1</sup> Thus, after reviewing the entire application file, we found that some of the submitted information consisted of personal financial information that must be withheld under section 552.101 in conjunction with common law privacy. You now ask this office to re-examine Open Records Letter No. 2001-4160 (2001) in light of your contention that this office mistakenly found surety bonds and surety bond riders to be protected under common law privacy. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling.

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<sup>1</sup> We note that the Public Information Act (the "Act") does not authorize a governmental body to seek a decision from this office if the governmental body reasonably believes that the requested information does not fall within an exception to required public disclosure. *See* Open Records Decision No. 665 at 3 (2000).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common law right to privacy. Information is protected under the common law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common law privacy.<sup>2</sup> *See* Open Records Decision Nos. 600 (1992), 545 (1990).

In your letter dated September 20, 2001, you state that the Motor Vehicle Board (the "board") of the department requires applicants to submit an original surety bond, or other form of security, before an application will be issued. You then cite to section 503.033(d) of the Transportation Code, which provides:

(d) A person may recover against a surety bond or other security if the person obtains against a person issued a motor vehicle dealer general distinguishing number or a wholesale motor vehicle auction general distinguishing number a judgment assessing damages and reasonable attorney's fees based on an act or omission on which the bond is conditioned that occurred during the term for which the general distinguishing number was valid.

You state that "[a]s a consequence of this provision, the [board] receives requests for copies of surety bonds on file for particular dealers on an almost daily basis from consumers, other dealers, and their attorneys who want to make a claim against the bond." You further state that "[s]ince the applicant must submit the original bond to our offices and because claims may be made against bonds long after the dealer in question has ceased business operations, we know of no other practical way for those who wish to make a claim against a dealer's bond to obtain the information regarding the bond other than from our licensing files."

Based on our review of your recent arguments, we conclude that the surety bonds and surety bond riders are not protected by common law privacy. Though the surety bonds and surety bond riders at issue consist of personal financial information, we believe that there is a legitimate public interest in their disclosure. Thus, the department must release the responsive surety bond and surety bond riders. *See also* Gov't Code § 552.022(a)(15)

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<sup>2</sup> We note that common law privacy protects the rights of individuals, not corporations. *See* Open Records Decision Nos. 192 (1978), 620 (1993) (corporation has no common law privacy interest in its financial information); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950).

(making information regarded as open to the public under an agency's policies expressly public unless confidential under other law). Therefore, Open Records Letter Ruling No. 2001-4160 (2001) is overruled to the extent it conflicts with this ruling.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 155263

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