



November 12, 2001

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

OR2001-5231

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154712.

The Texas Department of Transportation (the "department") received a request for the following information:

1. The full application package submitted by Stonebriar Chevrolet, Inc.;
2. Complete Dealer file for Reliable Chevrolet in Dallas, Texas;
3. All Proposal for Decisions or docket numbers for any 5.02(15) complaints;
4. Listing of all 5.02 complaints since 1990;
5. Listing of all cease and desist orders issued since 1990; and
6. Complete dealer file for Classic Chevrolet for its relocation to Grapevine, Texas.

You inform us that the department has provided the requestor with certain responsive information, but seeks to withhold leases and other financial information under sections 552.101 and 552.130 of the Government Code. In addition, pursuant to

section 552.305, you notified representatives of Stonebriar Chevrolet, Classic Chevrolet, and Reliable Chevrolet of the request for their information and invited them to submit arguments to this office as to why the information at issue should not be released.¹ As of the date of this ruling, we have received arguments only from Classic Chevrolet, which asserts that certain financial information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. Therefore, we will consider the arguments submitted by the department and Classic Chevrolet against disclosure of a portion of the requested information.

Initially, we note that the requestor specifically excludes from his request driver's license numbers, social security numbers, personal financial information, vehicle identification numbers, dealer plate numbers, telephone number verification information or copies of checks which may be contained in or with any of the files. Therefore, as this information is not responsive to the request, the department should redact any driver's license numbers, social security numbers, personal financial information, vehicle identification numbers, dealer plate numbers, telephone number verification information or copies of checks from the requested materials prior to release. In this regard, however, we note that while the requestor does not seek driver's license numbers, the submitted materials include a photocopy of an individual's driver's license. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must therefore withhold the photocopy of the Texas driver's license in its entirety under section 552.130.

We will next address the arguments for the financial information you have marked. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 protects information made confidential by common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the

¹See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common law privacy, *see* Open Records Decision Nos. 600 (1992), 545 (1990). Although the requestor has specifically excluded personal financial information from his request, we find one document in the submitted materials that constitutes personal financial information which must be withheld under section 552.101 in conjunction with common law privacy. We have marked this document. (See yellow flag). With regard to the remainder of the financial information you have marked, including lease agreements, we find that this information, in this instance, may not be withheld under section 552.101 on the basis of common law privacy as it does not reflect personal financial decisions of individuals such as sole proprietors. *See* Open Records Decision No. 620 (1993) (a corporation has no common law privacy interest in its financial information).

To summarize, the photocopy of the Texas driver's license must be withheld in its entirety under section 552.130. Driver's license numbers, social security numbers, vehicle identification numbers, dealer plate numbers, telephone number verification information or copies of checks from the requested materials should be redacted as not responsive to the request. The financial information that we have marked must be withheld under section 552.101 in conjunction with common law privacy. The remainder of the responsive information, including the submitted lease agreements, must be released to the requestor.

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 Department 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 154712

Enc. Submitted documents

c: Mr. Mitchell Madden
1800 Valley View Lane, Suite 200
Dallas, Texas 75234
(w/o enclosures)

Mr. Thomas R. Durant
Classic Chevrolet, Inc.
P.O. Box 1717
Grapevine, Texas 76099
(w/o enclosures)

Mr. Darrell McCutcheon
Stonebriar Chevrolet/Reliable Chevrolet
P.O. Box 831240
Richardson, Texas 75080
(w/o enclosures)