



December 5, 2001

Mr. David Zimmerman
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2001-5661

Dear Mr. Zimmerman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155719.

The Office of the Governor (the "governor") received a request for "copies of the Applications of all those most recently Appointed to the Texas State Board of Public Accountancy." You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that portions of the requested applications are confidential under section 411.084 of the Government Code. Section 411.084 provides:

Criminal history information obtained from the [Department of Public Safety] under this subchapter:

(1) is for the exclusive use of the authorized recipient of the information; and

(2) may be disclosed or used by the recipient only if, and only to the extent that, disclosure or use is authorized or directed by:

(A) this subchapter;

(B) another statute;

(C) a rule adopted under a statute; or

(D) an order of a court of competent jurisdiction.

Gov't Code § 411.084; *see id.* § 411.001. Thus, section 411.084 limits the use and disclosure of criminal history information obtained from the Department of Public Safety under subchapter F, chapter 411 of the Government Code. Here, the submitted information does not appear to contain criminal history information obtained from the Department of Public Safety pursuant to subchapter F. Therefore, we find that none of the submitted information is confidential under section 411.084 of the Government Code.

You also contend that information pertaining to driver's license suspensions is confidential under section 730.004 of the Transportation Code. Except in limited circumstances, section 730.004 prohibits the release of "personal information" about any person obtained in connection with a motor vehicle record by an agency that maintains or compiles motor vehicle records.¹ However, the governor is not an "agency" of the state that compiles or maintains motor vehicle records for purposes of section 730.004. *See* Transp. Code § 730.003(1) (defining "agency"). Therefore, we conclude that chapter 730 of the Transportation Code is not applicable in this case.

Finally, you contend that portions of the submitted information are confidential under common law privacy. Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We agree that some of the submitted information, which we have marked, is confidential under common law privacy and therefore must be withheld under section 552.101 of the Government Code. We do not believe that the remainder of the submitted information constitutes "highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person." Therefore, you must withhold the information we have marked and release the remainder of the submitted information.

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.

¹"Personal information" is defined as including an individual's social security number, driver identification number, name, address, and telephone number, but not information on vehicle accidents, driving or equipment relates violations, or driver's license status. *See* Transp. Code § 730.003(6).

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).

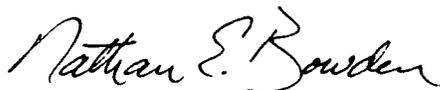
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 155719

Enc: Submitted documents

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(w/o enclosures)