



December 19, 2001

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

OR2001-5985

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# 156396.

The Texas Department of Transportation (the "department") received a request for dealer surety bond information on one of the Motor Vehicle Board's licensees. You state that the department does not believe that any of the responsive information should be withheld from disclosure, but that a prior ruling from this office, Open Records Letter No. 2001-4160 (2001), declared surety bonds and riders to be confidential. We note, however, that in Open Records Letter No. 2001-4160A (2001), this office re-examined and overruled its ruling in Open Records Letter No. 2001-4160 (2001). Accordingly, we conclude that the requested surety bond information is not confidential under the common law right to privacy and, thus, is not excepted from disclosure under section 552.101 of the Government Code.

We note that you have submitted correspondence indicating that you have notified the third party whose information is at issue in the current request pursuant to section 552.305 of the Government Code. *See* 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 Public Information Act in certain circumstances).

An interested third party is allowed 10 business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments for withholding the requested information from the third party whose information is at issue here, Cash Auto Sales. We thus have no basis for concluding that any of the requested information implicates the proprietary interests of any third party. *See* Open Records Decision Nos. 552 at 5 (1990) (stating that if governmental body takes no position, attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Since you do not claim that the submitted information is otherwise excepted from disclosure, the department must release the information regarding Cash Auto Sales.

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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 156396

Enc. Submitted documents

c: Mr. Eric Fancher
United Auto Credit Corporation
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(w/o enclosures)

Scott Johnson Enterprises, LLC
Cash Auto Sales
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Duncanville, Texas 75137
(w/o enclosures)