OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 21, 2001

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

OR2001-6065

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# 156471.

The Texas Department of Transportation (the "department") received a request for a copy of the surety bond for one of the Motor Vehicle Board's licensees. Although you state that the department does not want to withhold the requested bond, you seek our opinion as to whether the requested information is confidential under common law privacy. 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).[1] We have considered your arguments and reviewed the submitted information.

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*

[1]As of the date of this ruling, we have not received any comments from the third party.

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.[2] *See* Open Records Decision Nos. 600 (1992), 545 (1990).

You state that the Motor Vehicle Board (the "board") of the department requires applicants for independent motor vehicle dealer's licenses or wholesale motor vehicle auction general distinguishing numbers 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 the 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 arguments, we conclude that, while the submitted information consists of personal financial information, the public has a legitimate interest in the information. Therefore, the submitted information is not confidential under common law privacy and must be released. *See also* Gov't Code § 552.022(a)(15) (making information regarded as open to the public under an agency's policies expressly public unless confidential under other law).

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.

---

[2] For purposes of this ruling, we assume that the licensee at issue is a sole proprietor. 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).

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).

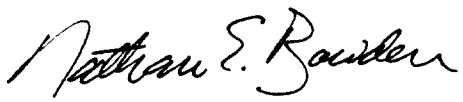
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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# 156471

Enc: Submitted documents

c: Ms. Jane Marsh
South Plains Auto Auction
11808 Hwy. 87
Lubbock, Texas 79423
(w/o enclosures)