



January 25, 2002

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

OR2002-0361

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# 158085.

The Texas Department of Transportation (the "department") received a request for information regarding Greenline Acceptance Corporation, Eagle Auto Sales & Service, Tamarack Funding, Tamarack Income Services Inc., Eagle Auto Sales, Illusion Recovery Service (Asset Recovery Service), and Changin' Up Auto Sales.

You indicate that the department has no record of Greenline Acceptance Corporation, Eagle Auto Sales & Service, Tamarack Income Services Inc., or Illusion Recovery Service as licensees. You also have notified the requestor that the department does not have a record of Changin' Up Auto Sales at the listed address. The Public Information Act does not ordinarily require a governmental body to release information that was not within its possession or control when it received a request. Open Records Decision Nos. 558 (1990), 499 (1988).

We note that you also notified Tamarack Funding Corporation, dba Tamarack Auto Sales, and Eagles Nest Auto Sales, Inc., dba Eagle Auto Sales, of this request for information and of their right to submit arguments to this office as to why the requested information should

not be released.¹ Section 552.305(d) allows a third party ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office had received no correspondence from either Tamarack Funding Corporation or Eagles Nest Auto Sales, Inc. Thus, neither third party has demonstrated that any of the requested information must be withheld from public disclosure. See Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990) (attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if governmental body takes no position, 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) (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).

This office recently issued Open Records Letter No. 2001-4775 (2001), which serves as a previous determination under section 552.301(a) of the Government Code for the department with respect to information subject to section 552.130 of the Government Code. Therefore, pursuant to that previous determination, you must withhold Texas driver's license numbers, Texas vehicle identification numbers, and Texas dealer plate numbers under section 552.130 of the Government Code. Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

We note that, although Open Records Letter No. 2001-4775 (2001) also granted the department a previous determination for certain social security numbers under section 51.251 of the Occupations Code, the Seventy-seventh Legislature repealed the applicable language of section 51.251. Thus, Open Records Letter No. 2001-4775 no longer constitutes a previous determination with respect to social security numbers. See Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination). Subsequently, however, this office issued Open Records Letter No. 2001-6050 (2001), which serves as a previous determination under section 552.301(a) of the Government Code that social security numbers that appear on application materials for licenses issued by the department that authorize applicants to maintain motor vehicle dealerships are confidential under section 56.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code. See Gov't Code § 552.301(a), (f); Open Records Decision No. 673 (2001). Accordingly, the department must withhold social security

¹See Gov't Code § 552.305(d); 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 to disclosure under Gov't Code ch. 552 in certain circumstances).

numbers that appear on application materials for licenses issued by the department that authorize applicants to maintain motor vehicle dealerships under section 552.101 of the Government Code.

You state that you "do not wish to withhold the information at issue from the requestor." You believe, however, that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office written comments stating the reasons why each exception that you raised would allow any information other than a social security number to be withheld.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a compelling reason exists to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). We therefore address your section 552.101 and 552.130 arguments.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also 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). 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). The submitted documents include a small amount of personal financial information which is protected from disclosure under common-law privacy. We have marked this information. The remainder of the submitted information is not afforded protection under common-law privacy. See Open Records Decision No. 620 (1993) (a corporation has no common law privacy interest in its financial information).

The submitted information contains a copy of a Texas driver's license. Section 552.130 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[.]

You must, therefore, withhold the copy of the Texas driver's license under section 552.130.

In summary, the department must withhold the social security numbers that appear in the submitted documents under section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code. The marked personal financial information is protected from disclosure under common-law privacy, and must be withheld under section 552.101. The department must also withhold the copy of a Texas driver's license and Texas driver's license, dealer plate, and vehicle identification numbers under section 552.130. The remaining information 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 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# 158085

Enc. Submitted documents

c: Mr. Barry Wheeler
5350 South Jay Circle #3A
Littleton, Colorado 80123
(w/o enclosures)

Tamarack Funding Corporation
4406 Lakeview Parkway
Rowlett, Texas 75088
(w/o enclosures)

Eagles Nest Auto Sales, Inc.
2915 South Garland Road
Garland, Texas 75046
(w/o enclosures)