



April 29, 2002

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

OR2002-2192

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# 161986.

The Texas Department of Transportation (the "department") received a request for a copy of "records pertaining to [a] dealership that is now inactive, including dealer license number, owner(s) names and addresses and if owner(s) have any other dealerships on file." You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that you have notified A N G Investments of the request for information 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 Open Records Act in certain circumstances). An interested third party is allowed ten 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, A N G Investments has not submitted to this office its reasons explaining why the submitted information should not be released. Thus, we turn to your arguments with respect to the submitted information.

In Open Records Letter No. 2001-4775 (2001), we concluded that the department could withhold from disclosure Texas driver's license numbers based on section 552.130 of the Government Code; and in Open Records Letter No. 2001-6050, we concluded 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 without the necessity of requesting a decision from our office with respect to these types of information. Because the facts, law, and circumstances surrounding these rulings do not appear to have changed, we find that you may rely on these rulings to withhold from disclosure based on sections 552.130 and 552.101 the Texas driver's license numbers contained within the submitted information, as well as social security numbers that appear on application materials for licenses issued by the department that authorize applicants to maintain motor vehicle dealerships. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001).

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 information protected by other statutes. Section 552.101 also 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 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. *See* Open Records Decision Nos. 600 (1992), 545 (1990). After reviewing the submitted information, we have marked portions of the owner's financial information which are confidential based on a common-law right to privacy.

Furthermore, section 552.136 of the Government Code makes certain account number information confidential and provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Accordingly, the department must withhold the account number we have marked under section 552.136 of the Government Code.

You ask for a previous determination allowing the department to withhold from disclosure without seeking an open records ruling leases, financial information, telephone verifications, copies of checks, maps, and copies of telephone book listings under section 552.101 in conjunction with the common-law right to privacy. We decline to issue such a previous determination at this time.

In summary, the department must withhold Texas driver's license numbers as well as social security numbers appearing on application materials for motor vehicle dealership licenses pursuant to sections 552.130, 552.101, and Open Records Letter Nos. 2001-4775 and 2001-6050. The department may withhold portions of the owner's personal financial information, which we have marked, under section 552.101 in conjunction with common-law privacy and the account number we have marked under section 552.136 of the Government Code. The remainder of the submitted 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 161986

Enc: Submitted documents

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