



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 14, 2003

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

OR2003-0279

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# 174995.

The Texas Department of Transportation ("TxDOT") received two requests from the same requestor for copies of the applications and licenses for two specific dealers for the 2000 to 2002 period. You ask this office whether you may release information, which you believe is confidential, to an agency of another state. We have reviewed the submitted information.

Initially, we address TxDOT's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You state that TxDOT received the present request for information on October 16, 2002. TxDOT did not request a decision from this office until November 1, 2002. Consequently, TxDOT failed to request a decision within the ten-business-day period mandated by section 552.301(a) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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). As sections 552.101 and 552.130 of the Government Code provide a compelling reason to overcome the presumption of openness, we will address these exceptions. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We note that TxDOT is authorized to rely on the previous determinations issued by this office in Open Records Letter Nos. 2001-6050(2001) and 2001-4775 (2001) with regard to the confidentiality of Texas driver's license numbers, Texas vehicle identification numbers, Texas dealer plate numbers, and social security numbers appearing on application materials for dealer licenses under sections 552.101 and 552.130 of the Government Code. Therefore, TxDOT must withhold this information. You have asked whether the doctrine of intergovernmental transfer would allow you to transfer this otherwise confidential information to the State of Tennessee's Department of Public Safety. This office has concluded that information may be transferred between governmental bodies that are subject to the Texas Public Information Act (the "Act") without waiving exceptions to the public disclosure of that information or affecting its confidentiality. See Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). Because the State of Tennessee is not subject to the Act, the doctrine of intergovernmental transfer is inapplicable here. Therefore, the driver's license numbers and social security numbers in the submitted documents must be withheld.

You also question whether TxDOT can release an ownership percentage contained in the submitted information without violating confidentiality rules. 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 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). This office has generally 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). Although this office generally concludes that ownership percentages reflect personal financial information, we do not extend that principle to this situation. Where an individual holds a one hundred percent interest in a business, the information simply reflects that the individual owns his own business. We find this information is not highly intimate or embarrassing for purposes of common-law privacy and is therefore not confidential. Therefore, you must release this 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.

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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 174995

Enc: Submitted documents

c: Mr. Charles Bradley
Tennessee Department of Safety
Criminal Investigations Division
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Nashville, Tennessee 37249-1000
(w/o enclosures)