



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 11, 2003

Mr. Chris Kadas
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2003-0928

Dear Mr. Kadas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176501.

The Texas Department of Licensing and Regulation (the "department") received a request for "1) proof of reimbursement policies or 2) an audit report and audited financial statements for the most recent fiscal year for those vehicle protection product warrantors who filed these articles to fulfill the financial security requirement under article 9035." You advise that you are providing some of the requested information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101. You also claim that the information is excepted under section 552.110 of the Government Code, and you have provided documentation showing that you have notified an interested third party, Gulf States Toyota, Inc. ("GSTP"), whose proprietary interests may be implicated by the request, of the request for information. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* 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 (the "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, GSTI has not submitted to this office its reasons explaining why its information should not be released. Therefore, GSTI has provided us no basis to conclude that its information is excepted from disclosure under section 552.110. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We now address the department's claim under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information covered by the common-law right of 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); *see also* Open Records Decision No. 373 (1983) (common-law privacy protects assets and income source information). However, common-law privacy protects only the rights of individuals, not corporations. *See* Open Records Decision No. 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). Because GSTI is a corporation, its information is not protected by the common-law right of privacy. Furthermore, you have not directed our attention to any other law, nor are we aware of any law, under which any of the information in question is considered to be confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the submitted information is not excepted from disclosure under section 552.101 of the Government Code. Consequently, it 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).

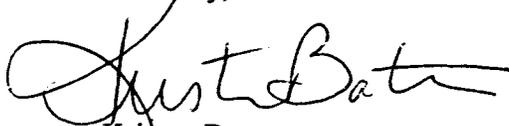
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 176501

Enc. Submitted documents

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