



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 13, 2003

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

OR2003-0953

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# 176498.

The Texas Department of Transportation (the "department") received a request for "the paperwork related to the authorization of Quality Motors being able to move the new car Suzuki line from Broughton's location" to another specified location. You advise that you are withholding Texas driver's license numbers, dealer plate numbers, and social security numbers appearing on application materials for dealer licenses in reliance on the previous determinations issued by this office in Open Records Letter Nos. 2001-4775 (2001) and 2001-6050 (2001). *See* Open Records Decision No. 673 at 7-8 (2001) (criteria of previous determination for information in specific, clearly delineated categories). You state that you do not wish to withhold any other information, but ask whether portions of the remaining requested information are excepted under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. Finally, pursuant to section 552.305 of the Government Code, you have notified Cantwell Fielder, Ltd. d/b/a Quality Suzuki ("Quality Suzuki"), of this request for information, of the fact that the instant request for information may implicate its proprietary interests, and of its right to submit arguments to this office explaining why the requested information should not be released. *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). We have considered all submitted comments and have reviewed the submitted information.

We first note that Quality Suzuki's attorney argues that not all of the information in the department's possession is responsive to the request for paperwork related to Quality Motors' authorization to move the location of the new car Suzuki line. However, we are unable to determine that any of the information submitted to this office by the department is nonresponsive to the request for information.

Quality Suzuki also argues that the submitted lease information and any information relating to the relationship between Quality Suzuki and American Suzuki Motor Corporation must be withheld under section 552.110(b). Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). After reviewing the brief submitted by counsel for Quality Suzuki, we conclude that the third party has not demonstrated the applicability of section 552.110(b) to any portion of the submitted information.

We now address Quality Suzuki's claims and the department's questions as to whether the department can release ownership percentage, lease, and other financial information 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). After reviewing the submitted documents, we find that the ownership percentage information we have marked is confidential pursuant to the owner's common-law right to privacy. The department must withhold this information pursuant to section 552.101 and common-law privacy. However, 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 that this information is not highly intimate or embarrassing for purposes of common-law privacy and is therefore not confidential. We have marked additional personal financial information that is not of legitimate concern to the public and,

therefore, is protected from disclosure under common-law privacy. The remainder of the ownership percentage information, as well as the lease and remaining financial 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).

You state that the submitted documents contain information, which you have marked, that may be protected by copyright. We agree that this information is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

Finally, you ask for a previous determination allowing the department to withhold from disclosure without seeking an open records ruling copyrighted information, ownership percentages, property leases, information labeled confidential, and personal financial information. Whether these types of information falls within an exception to disclosure must be determined on a case-by-case basis. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 523 at 3-4 (1989), 385 (1983), 373 at 3-4(1983); *see also* Open Records Decision No. 620 at 4 (1993). For this reason, we decline to issue such a previous determination at this time.

In summary, the department must withhold the dealer plate numbers, driver's license information and social security numbers for which it has been granted previous determinations. The department must withhold the marked personal financial information under section 552.101 in conjunction with common-law privacy. The remainder of the submitted information must be provided to the requestor. In doing so, the department must comply with the copyright law and is not required to furnish copies of information that is copyrighted.

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).

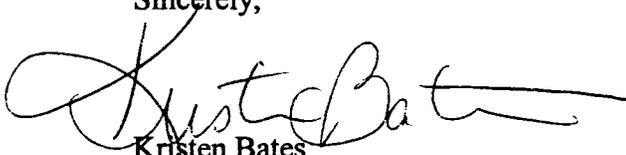
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "Kristen Bates", written over a printed name.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 176498

Enc. Submitted documents

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