



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 14, 2003

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

OR2003-1000

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# 176492.

The Texas Department of Transportation (the "department") received a request for a real estate lease involving a specified location in Kirby, Texas. The department takes no position with regard to whether the lease must be withheld from public disclosure. You also inform us that the requestor is one of the parties to the lease. However, you believe that this request for information may implicate the proprietary interests of the other party to the lease. You notified the other party of this request and of his right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (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 chapter 552 in certain circumstances). You also submitted the requested information to this office. We have reviewed the information you submitted.

We first note that an interested private party is allowed ten business days from the date of its receipt of the governmental body's notice to submit the party's reasons, if any, as to why information relating to that party should not be released to the public. *See* Gov't Code § 552.305(d)(2)(B). This office has received no correspondence from the private party that you notified under section 552.305. Therefore, we have no basis for a conclusion that any information contained in the requested lease constitutes proprietary information that must be withheld from the public. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Nevertheless, we note that certain types of personal financial information are protected by common-law privacy 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." Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from disclosure by common-law privacy to be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

In this instance, the requested information is contained in a private real estate lease agreement. The requestor states that he is the lessor. As such, the requestor has a special right of access to his own private financial information.¹ The lease also is signed by a second individual on behalf of "A OK KARZ." You do not inform us, however, nor can we ascertain who is the actual lessee. If the lessee is an individual or a sole proprietorship, then the portion of the lease that we have marked must be withheld from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Otherwise, the marked information is not private under section 552.101 and must be released. *See generally* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). In either event, the department must release the remaining contents of the lease agreement.

¹*See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself).

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).

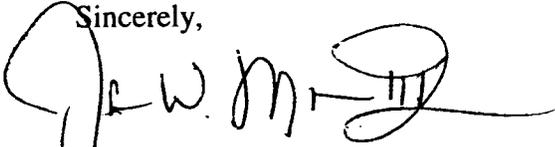
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 176492

Enc: Marked document

c: Mr. Charles Williams
5667 Castle Glade
San Antonio, Texas 78218
(w/o enclosure)

Mr. William Dawkins
5310 FM 78
Kirby, Texas 78219
(w/o enclosure)