



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 12, 2003

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

OR2003-1648

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# 177785.

The Texas Department of Transportation (the "department") received a request for information regarding JKP Equipment, a motor vehicle dealer licensed by the department's Motor Vehicle Board. The requestor is an agent of the National Highway Safety Administration, an agency within the United States Department of Transportation. You state that some responsive information will be released to the requestor. You indicate that the responsive records contain information subject to previous determinations of this office issued to the department in Open Records Letter Nos. 2001-4775 (2001) and 2001-6050 (2001). *See* Gov't Code § 552.301(a), (f) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests). You advise, however, that the department does not wish to withhold information from another governmental entity. Accordingly, you inquire whether the department may release social security numbers, dealer license plate numbers, and ownership percentage information to the requestor. We have considered your comments and reviewed the submitted information.

We first address the ownership percentage information in the submitted records. 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 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), *cert. denied*, 430 U.S. 931 (1977). 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). In this case, the submitted records demonstrate that a single individual owns one hundred percent of the motor vehicle dealership at issue. We determine that the ownership percentage information in the submitted records is not protected by common-law privacy. Accordingly, we find that the ownership percentage information in the submitted records is not excepted from disclosure pursuant to 552.101 of the Government Code in conjunction with common-law privacy.

Next, we address the social security numbers and motor vehicle information in the submitted documents. In Open Records Letter No. 2001-6050 (2001), this office issued the department a previous determination, ruling that social security numbers that appear on application materials for licenses to maintain motor vehicle dealerships issued by the department are confidential under section 56.001 of the Occupations Code and must be withheld under section 552.101 of the Government Code. Pursuant to Open Records Letter No. 2001-6050, the department is allowed to withhold social security numbers in license applications without requesting a decision from this office, provided that the elements of law, fact, and circumstances have not changed. See Gov't Code § 552.301(a), (f); Open Records Decision No. 673 (2001). In Open Records Letter No. 2001-4775 (2001), this office issued the department a previous determination, ruling that Texas driver's license numbers, Texas dealer plate numbers, and vehicle identification numbers appearing on application materials for licenses to maintain motor vehicle dealerships issued by the department are excepted from disclosure under section 552.130 of the Government Code. Pursuant to Open Records Letter No. 2001-4775, the department is allowed to withhold motor vehicle information in license applications without requesting a decision from this office, provided that the elements of law, fact, and circumstances have not changed. See Gov't Code § 552.301(a), (f); Open Records Decision No. 673 (2001). Nevertheless, you asks whether the department can release social security numbers and license plate numbers where, as here, the requestor is a federal agency.

This office has determined that information that is excepted from public disclosure under the Public Information Act may generally be transferred between state agencies without destroying its confidential character, provided the agency to which the information is transferred has the authority to obtain it. See Open Records Decision Nos. 650 (1996), 516 (1989) (Department of Public Safety transfer to Texas Attorney General's Child Support Enforcement Office authorized by statute), 490 (1988) (Board of Vocational Nurse Examiners transfer to Texas Peer Assistance Program for Impaired Nurses authorized by

statute); *see also* Attorney General Opinions DM-353 at 4 n. 6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body). These decisions are based on the well-settled policy of this state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. Open Records Decision No. 516 (1989).

In this instance, however, the governmental entity requesting the information is a federal agency that is not subject to the Public Information Act. In Open Records No. 650 (1996), this office determined that a governmental body may not disclose information that is confidential by law to a federal agency absent a federal law requiring the disclosure of the confidential information. *See* Open Records Decision No. 650 at 3 (1996) (policy supporting interagency exchange of information is absent when a federal agency requests information that is not required by law to be disclosed to it, since the state cannot effectively insure that the federal agency will maintain the confidentiality of the information); *see also* Attorney General Opinions H-836 (1976), H-242 (1974) (state may not release information made confidential by statute, unless some other law requires its disclosure).

You do not indicate, and the request does not reflect, that a federal law requires the disclosure of social security numbers and dealer license plate numbers to the requestor in this case. Consequently, we determine that the department may not disclose the social security numbers or dealer license plate numbers contained in the submitted documents to the requestor pursuant to an intergovernmental transfer. We therefore conclude that the department must withhold the social security numbers and dealer license plate numbers in the submitted documents pursuant to the rulings in Open Records Letter Nos. 2001-6050 (2001) and 2001-4775 (2001). *See* Open Records Decision No. 673 (2001). The remainder of the submitted information must be released to the requestor. We note you ask this office to issue you a previous determination regarding requests for social security numbers, dealer license plate numbers, and ownership percentage information from an agency of the federal government. We decline to issue a previous determination at this time.

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 Dep't of Pub. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 177785

Enc: Submitted documents

c: Ms. Nancy Birnbaum
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(w/o enclosures)