



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 4, 2003

Ms. Shelby R. Rogers
Chief Operating Officer and General Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487

OR2003-3817

Dear Ms. Rogers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184587.

The State Bar of Texas (the "Bar") received a request for information regarding several attorneys' applications submitted to the Advertising Committee concerning advertisements. You state that there is no responsive information for some of the named attorneys. You have released all other responsive information but claim that credit card numbers are excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value;
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, the Bar must withhold the credit card numbers it has marked pursuant to section 552.136 of the Government Code.

The Bar requests that this office issue a previous determination allowing the Bar to withhold credit card numbers from public disclosure. After considering your request, we have decided that this letter ruling shall serve as a previous determination under section 552.301(a) that credit card numbers are excepted from disclosure under section 552.136 of the Government Code. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). However, we note that section 552.136 protects the privacy of the individual to whom the information relates. Therefore, a person's credit card number must be released to that person or that person's authorized representative. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to information that is protected by laws intended to protect a person's privacy). Moreover, because this provision was enacted to protect the privacy of an individual, the protection extinguishes upon the individual's death. This conclusion is consistent with prior decisions of this office, which held that exceptions of the PIA that only protect a person's privacy interest do not survive the death of that person. *See* Attorney General Opinion H-917 (1976) (common-law privacy under sections 552.101 and 552.102 lapses on person's death); Open Records Decision Nos. 536 (1989) (section 552.119 does not except peace officer's photograph after officer's death), 524 (1989) (section 552.114 does not except student records after student's death). Generally, the Bar may not withhold a deceased person's credit card number. The Bar must withhold the credit card number only if the credit card account is jointly owned by the deceased and a person who is a joint holder of the account.

This previous determination applies only to credit card numbers that are requested of the State Bar of Texas. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the Bar need not ask for a decision from this office again with respect to this type of information requested of the Bar. *See id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. 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 of 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 184587

Enc: Submitted documents

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(w/o enclosures)