



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2004

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

OR2004-7184

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# 207689.

The Texas Department of Transportation (the "department") received a request for any information pertaining to complaints filed against a named auto dealership, responses to these complaints, and any licensing documents concerning this dealership. You explain that the department will redact Texas driver's license numbers, dealer plate numbers, vehicle identification numbers, and social security numbers appearing on application materials for licenses issued by the department 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)(establishing criteria for previous determinations). You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, pursuant to section 552.305 of the Government Code, you have notified an interested third party of this request for information, of the fact that the request for information may implicate his proprietary interests, and of his 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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act ("Act") in certain circumstances). We received

arguments from the interested third party. We have considered all of the submitted arguments and reviewed the submitted information.

Initially, we note that you have not submitted any information relating to the request for complaints filed against the named dealership. As you have not submitted this information, we assume the department has released it to the extent that it existed on the date the department received this request. If the department has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We now turn to your arguments regarding the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common law privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).

The common law right to privacy encompasses some types of personal financial information. This office has determined that financial information that relates 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) ("In general, we have found the kinds of financial information not excepted from public disclosure by common law privacy to be those regarding the 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). We note, however, that common law privacy protects the interests of individuals, not those of corporations and other types of business organizations. *See* 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* *U. S. 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). We have marked personal financial information that relates to individuals and is protected by common law privacy. The department must withhold this information under section 552.101.

In summary, we conclude that: 1) the department must withhold the Texas driver's license and motor vehicle information and social security numbers for which it has been granted previous determinations; and 2) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy. The remaining submitted information must be released to the requestor.

Although you request that this office issue a previous determination regarding this information, we decline to do so 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 207689

Enc. Submitted documents

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