



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 15, 2005

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

OR2005-03267

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222296.

The Texas Department of Transportation (the "department") received a request for licensing information related to two licensees. You indicate that the department will redact Texas driver's license numbers and social security numbers 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). Further, you state that the department does not wish to withhold the remaining requested information, but you suggest that portions of the information may be excepted from disclosure under section 552.101 of the Government Code. Additionally, pursuant to section 552.305 of the Government Code, you have notified interested third parties Lucky 13 Auto Sales and Sunny's Motors of the fact that this request for information may implicate their proprietary interests and of their 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 the Act in certain circumstances). We have reviewed the submitted information.

We first note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither of the

interested third parties has submitted to this office any reasons explaining why the requested information relating to it should not be released; therefore, this office has no basis for concluding that either third party has a proprietary interest in this information. Accordingly, we conclude that you may not withhold any portion of the submitted information on the basis of any proprietary interest third parties may have in the information. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

Next, we consider whether any of the requested information is excepted from disclosure under section 552.101 in conjunction with common-law privacy. Specifically, you indicate that ownership percentages, information concerning the type of business at issue, and property leases may be confidential. Certain types of personal financial information are protected by common-law privacy under section 552.101 of the Government Code. This section 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 Indus. Found. v. Tex. 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). Further, although this office generally concludes that ownership percentages reflect personal financial information, we do not extend that principle to this situation. 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 this information is not highly intimate or embarrassing for purposes of the common-law right to privacy and is, thus, not confidential for purposes of the common-law right to privacy. Additionally, we note 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); *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 the personal financial information that is protected by common-law privacy. The department must withhold this information under section 552.101. The remaining submitted information, including the type of business at issue, is not protected by common-law privacy and must be released.

In summary, the department must withhold the Texas driver's license numbers 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 remaining submitted information must be released.

Finally, the department requests that this office grant a previous determination allowing it to withhold ownership percentages, information concerning the type of business at issue, and property leases. We decline to do so at this time. Accordingly, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#222296

Enc. Submitted documents

c: Mr. Gil Hernandez  
Special Investigations Unit  
Farmers Insurance Group  
P. O. Box 380999  
Duncanville, TX 75138  
(w/o enclosures)

Mr. James Stephens  
Lucky 13 Auto Sales  
3008 E. Belknap  
Fort Worth, TX 76111  
(w/o enclosures)

Mr. Sunday Ogierumwense  
Sunny's Motors  
4072 E. Loop 820 S  
Fort Worth, TX 76119  
(w/o enclosures)