



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 8, 2005

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

OR2005-06048

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# 227725.

The Texas Department of Transportation (the "department") received a request for licensing information relating to three named motor vehicle dealers.<sup>1</sup> You inform us that the department will release some of the requested information. You also state that Texas driver's license numbers, dealer plate numbers and vehicle identification numbers will be withheld under section 552.130 of the Government Code in accordance with the previous determination issued to the department in Open Records Letter No. 2001-4775 (2001).<sup>2</sup> You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code. You also have notified private parties of this request for

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<sup>1</sup>We note that the requestor also asks a question regarding motor vehicle dealerships. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body need not take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that received the request. See Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request for information to records that are within its possession or control. See Open Records Decision No. 561 at 8-9 (1990).

<sup>2</sup>Section 552.130 excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state" or "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1)-(2).

information and of their right to submit arguments to this office as to why the requested information should not be released.<sup>3</sup> We have considered your arguments and have reviewed the information you submitted.

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from any of the private parties that you notified under section 552.305. Thus, there has been no demonstration that any of the submitted information is proprietary for the purposes of the Act. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address section 552.101 of the Government Code. This section excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential. Section 58.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 58.001.<sup>4</sup> We note that a previous determination issued by this office under the statutory predecessor to section 58.001 authorizes the department to withhold social security numbers appearing on application materials for licenses issued by the department that authorize applicants to maintain motor vehicle dealerships without the necessity of again requesting an attorney general decision. *See* Open Records Letter No. 2001-6050 (2001); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301). We agree that the social security number that you have marked is encompassed by Open Records Letter No. 2001-6050 (2001) and must be withheld from disclosure under section 552.101 of the Government Code. We have marked another reference to this social security number that the department also must withhold under section 552.101 in conjunction with section 58.001 of the Occupations Code.

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<sup>3</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

<sup>4</sup>The Seventy-eighth Legislature renumbered former section 56.001 of the Occupations Code as section 58.001. *See* Act of June 21, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Sess. Law Serv. 4146.

Section 552.101 also incorporates the common-law right to privacy. Information must be withheld from the public 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. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally 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, some of the submitted information relates to a corporate entity. 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) (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). Thus, the department may not withhold any of the submitted information that relates to the corporate entity under section 552.101 and common-law privacy. Furthermore, although this office generally classifies percentages of ownership of a business as personal financial information, we do not so hold where an individual owns a one hundred percent interest in a business. Such information simply reflects that an individual owns his own business. Thus, the submitted information that reflects one hundred percent ownership is not protected by common-law privacy and may not be withheld on that basis under section 552.101. We have marked other information that comes within the scope of the common-law right to privacy and must be withheld under section 552.101 of the Government Code.

Lastly, we note that the department must withhold some of the submitted information under section 552.136 of the Government Code.<sup>5</sup> Section 552.136 provides as follows:

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<sup>5</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(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; or
- (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. We have marked an account number that the department must withhold under section 552.136.

In summary: (1) you must withhold Texas driver’s license, dealer plate and vehicle identification numbers under section 552.130 of the Government Code in accordance with the previous determination issued to the department in Open Records Letter No. 2001-4775; (2) you must withhold the social security number under section 552.101 in conjunction with section 58.001 of the Occupations Code; (3) you must withhold the information that is confidential under section 552.101 in conjunction with common-law privacy; and (4) you must withhold the account number under section 552.136. The rest of the submitted information must be released.

You also ask this office to issue a previous determination that would permit the department to withhold ownership percentages, type of business information, financial information, property leases, warranty deeds, telephone verifications, Texas sales tax permits, and property value notices without the necessity of again requesting an attorney general decision under the Act. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue such a decision 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).

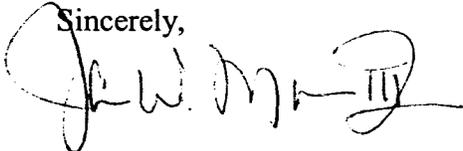
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is fluid and cursive, with the first letters of each name part being capitalized and prominent.

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

JWM/sdk

Ref: ID# 227725

Enc: Submitted documents

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