



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2005

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701

OR2005-11506

Dear Ms. Alexander:

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# 238812.

The Department of Transportation (the "department") received a request for information related to the issuance of a dealer's license to a named individual. You indicate that the department will redact Texas motor vehicle record information 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) and section 552.147(b) of the Government Code. *See* Open Records Decision No. 673 at 7-8 (2001) (establishing criteria for previous determinations); *see also* Gov't Code § 552.147(b) (authorizing governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from the Attorney General's Office). You also state that some of the requested information will be released to the requestor, but claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also have notified a private party of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ We have considered the exception

¹*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).

you claim and reviewed the submitted information. We have also considered arguments submitted by the named licensee. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

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. Information must be withheld from disclosure under 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). Certain types of personal financial information are protected by common law privacy. 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). The determination of whether the public's interest in obtaining particular financial information is sufficient to justify its disclosure must be made on a case-by-case basis. Open Records Decision No. 373 at 4 (1983). 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. We have marked personal financial information that, in this instance, is protected by common law privacy. The department must withhold this information under section 552.101.

We note that the submitted information contains an account number. Section 552.136 of the Government Code states that "[n]otwithstanding 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. In accordance with section 552.136 of the Government Code, the department must withhold the account number that we have marked in the submitted documents.

We also note that the submitted information contains an e-mail address. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type

specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address we have marked does not appear to be of a type specifically excluded by section 552.137(c). Therefore, the department must withhold this e-mail address in accordance with section 552.137 unless the department receives consent for its release.

In summary, the department must withhold the Texas motor vehicle record information and social security numbers for which it has been granted previous determinations. The department must also withhold the information we have marked under sections 552.101, 552.136, and 552.137 of the Government Code. The remaining information must be released to the requestor.

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).

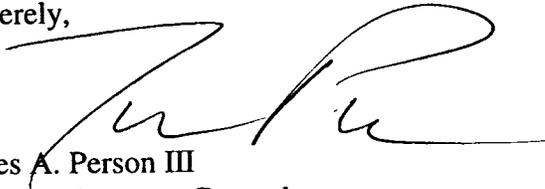
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/krl

Ref: ID# 238812

Enc. Submitted documents

cc: Mr. Johnnie L. Thorp
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(w/o enclosures)