



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2006

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2006-04826

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# 248774.

The Texas Department of Transportation (the "department") received a request for a specified motor vehicle dealer's license application. You state that the department will redact Texas driver's license numbers, dealer plate numbers, and vehicle identification numbers appearing on application materials for licenses issued by the department in reliance on the previous determination issued by this office in Open Records Letter No. 2001-4775 (2001). *See* Open Records Decision No. 673 at 7-8 (2001) (establishing criteria for previous determinations). You inform us that you will redact the social security numbers pursuant to section 552.147 of the Government Code.¹ You state that you have released some of the requested information but claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have received comments submitted by the licensee at issue's attorney. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered all claimed exceptions and reviewed the submitted information.

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Section 552.101 of the Government Code 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 the common law right of privacy, which protects information that 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). 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). Upon review, we find that the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with the common law right to privacy.

You also claim that e-mail address contained in the submitted information is confidential under section 552.137 of the Government Code. Section 552.137 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 at issue does not appear to be of a type specifically excluded by section 552.137(c). Therefore, in accordance with section 552.137, the department must withhold the e-mail address that you have marked unless the department receives consent to release it.

In summary, the department must withhold the personal financial information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common law privacy. The e-mail address you have marked must be withheld under section 552.137 of the Government Code unless the department receives consent to release it. The remaining submitted information must be released to the requestor.

You also ask this office to issue a previous determination that would permit the department to withhold financial statement information of sole proprietors submitted to the department

in the motor vehicle division's license process 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). Furthermore, the attorney of the licensee at issue also asks this office to issue a previous determination permitting the department to withhold his client's financial statement and property lease information without the necessity of requesting a decision from this office. 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); *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,

A handwritten signature in cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eb

Ref: ID#248774

Enc. Submitted documents

c: Ms. Laurie Parrish
4624 Waterhill Lane
Fort Worth, Texas 76179
(w/o enclosures)