



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2006

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

OR2006-12921

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# 263529.

The Texas Department of Transportation (the "department") received a request for information pertaining to a specified car dealer and its owner. You state that the department does not wish to withhold the submitted information, but indicate that portions of the information may be excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.137 of the Government Code. We have reviewed the submitted information.

Initially, we note you inform us that the department is redacting 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).<sup>1</sup> See Open Records Decision No. 673 at 7-8 (2001) (establishing criteria for previous determinations). We note, however, that you have redacted motor vehicle record information of other states. Open Records Letter No. 2001-4775 is not a previous determination that allows the department to withhold this type of information; therefore, the department must release the motor vehicle record information of other states in the submitted documents that you have redacted. See Gov't Code § 552.301(a); ORD 670.

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<sup>1</sup>You inform us that you will also redact social security numbers pursuant to section 552.147 of the Government Code. See Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision under the Act).

You assert that some of the submitted information may be excepted under section 552.101 of the Government Code, which 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 that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common law right to privacy. See Open Records Decision Nos. 545, 523 (1989); see also Open Records Decision No. 600 (finding personal financial information to include choice of particular insurance carrier).

You inform us that the submitted information includes financial documents provided to the department pursuant to a license application process, as well as information pertaining to an "enforcement action" against the dealer at issue. Some of the submitted information is confidential under common-law privacy; therefore, the department must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code. The remaining information is either not intimate or embarrassing, or it is of legitimate concern to the public; therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides in relevant part the following:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

...

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

...

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Generally, under section 552.130, the department may release information relating to a Texas driver's license only if, and in the manner, authorized by chapter 730 of the Transportation Code.

The purpose of chapter 730 of the Transportation Code, also known as the Motor Vehicle Records Disclosure Act, is to "protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized by the individual or by law." Transp. Code § 730.002. Section 730.003 of the Transportation Code provides that, for purposes of chapter 730:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency or political subdivision of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) A record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601 [of the Transportation Code].

...

(6) "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information. The term does not include:

(A) information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status; or

(B) information contained in an accident report prepared under Chapter 550 or 601.

*Id.* § 730.003(1), (4), (6). Section 730.004 provides as follows:

Notwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

*Id.* § 730.004. Thus, except as provided by sections 730.005 through 730.007, section 730.004 does not permit the release of “personal information” obtained by an “agency” in connection with a “motor vehicle record.”

We find that the department is an “agency” for purposes of chapter 730. *See* Transp. Code § 730.003(1). Furthermore, some of the submitted information qualifies as “motor vehicle records,” as defined by section 730.003(4). Section 730.007 of the Transportation Code enumerates the requestors who are eligible to receive information from the department. The requestor here is not one of the persons listed in section 730.007. Therefore, to the extent that the submitted information contains “personal information” under section 730.003(6), the department may not release such information. *See id.* § 730.004; *see also id.* §§ 730.005, 730.006, 730.007. We have marked the information that must be withheld from disclosure under section 552.130 of the Government Code in conjunction with section 730.004 of the Transportation Code.

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136(b) 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.” The department must withhold the account numbers we have marked under section 552.136.

Finally, the department asserts that some of the remaining information is excepted 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). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the department must withhold the e-mail addresses we have marked under section 552.137.

To conclude, the department must withhold the following: (1) the information marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information marked under section 552.130 of the Government Code in conjunction with section 730.004 of the Transportation Code, to the extent that this information consists of

“personal information” under section 730.003(6); (3) the account numbers we have marked under section 552.136 of the Government Code; and (4) the e-mail addresses we have marked under section 52.137 of the Government Code. The department must release the remaining information.

Although you request a previous determination regarding the requested categories of information, we decline to issue one 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).

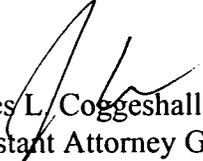
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 263529

Enc. Submitted documents

c: Mr. Ahmad Keshavarz  
106 East 6<sup>th</sup> Street #725  
Austin, Texas 78701  
(w/o enclosures)