



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2012

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2012-04560

Dear Mr. Mann:

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# 448931 (GCA 12-0016).

The Garland Police Department (the "department") received a request for information pertaining to a specified automobile accident. You state the department has released most of the requested information. You claim some of the submitted information is exempted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from 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 protected by other statutes, including the Driver's Privacy Protection Act of 1994 (the "DPPA"), 18 U.S.C. §§ 2721-2725. Section 2721 provides, in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

- 1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or
- 2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in

connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

(b) Permissible uses.—Personal information referred to in subsection (a) . . . subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions[.]

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b) (11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b) (11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)-(c). For purposes of section 2721, section 2725 of title 18 of the United States Code defines “motor vehicle record” and “personal information” as follows:

(1) “[M]otor vehicle record” means any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

(3) “[P]ersonal information” means information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.

Id. § 2725(1), (3). Section 2721(a) is applicable to state departments of motor vehicles. *See id.* § 2721(a). Pursuant to section 2721(b), personal information may be disclosed to certain entities by a state department of motor vehicles. *See id.* § 2721(b). You state the information you have marked “appear[s] to have been obtained through an electronic database containing motor vehicle records.” Upon review, we find the department is not a state department of motor vehicles. Further, you do not state the department received the information at issue from a state department of motor vehicles. Therefore, you have failed

to demonstrate any of the submitted information is subject to section 2721(a) of the DPPA. Accordingly, department may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding 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.” Transp. Code § 730.004; *see also id.* § 730.003(4) (defining motor vehicle record to include 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). Pursuant to section 730.007, personal information may be disclosed to an authorized recipient under certain circumstances, including a governmental agency collecting information to carry out its functions. *See id.* § 730.007(a)(2)(A)(I). Section 730.013 of the Transportation Code provides for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

Id. § 730.013(a), (b). Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the department compiles or maintains motor vehicle records; therefore, section 730.004 does not apply to the department. Further, you do not represent the department received the information at issue from an agency that compiles or maintains motor vehicle records for purposes of section 730.013. Accordingly, the department may not withhold any part of the submitted information under section 552.101 of the Government Code in conjunction with section 730.004 or section 730.013 of the Transportation Code. *See Open Records Decision No. 478 at 2 (1987)* (language of confidentiality statute controls scope of protection).

We note some of the submitted information is subject to the doctrine of common-law privacy, which is encompassed by section 552.101 of the Government Code. Common-law privacy 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). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We note that common-law privacy protects the interests of individuals, not those of corporate and other business entities. *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 United States 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).

Upon review, we find the medical and financial information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). We have marked information that is subject to section 552.130.

Section 552.136 of the Government Code provides 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.” *Id.* § 552.136(b). An access device number is one that 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,” and includes an account number. *Id.* § 552.136(a). This office has determined an insurance policy number is an account device number for purposes of section 552.136. We have marked insurance policy numbers subject to section 552.136.

We note the requestor in this instance is a representative of the insurance provider for the owner of one of the vehicles listed in the submitted information, and may be requesting the information as an authorized representative of the owner and the individual driving this vehicle. In this event, because sections 552.130 and 552.136 protect personal privacy, the requestor would have a special right of access to the information pertaining to the vehicle and the driver. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect

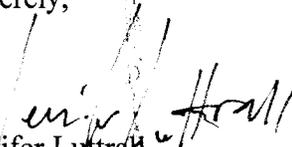
person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, if the requestor is acting as the authorized representative of the owner or driver of the vehicle, then the motor vehicle record information and insurance policy number that pertains to the vehicle and driver may not be withheld from the requestor. However, if the requestor is not acting as the authorized representative of the owner and driver at issue, the department must withhold that information, which we have marked, under sections 552.130 and 552.136. The department must withhold the remaining information we have marked under section 552.130 and 552.136 of the Government Code.

In summary, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the owner and driver of the vehicle at issue, the department must withhold the information we have marked that pertains to the vehicle and driver under sections 552.130 and 552.136. The department must withhold the remaining information we have marked under section 552.130 and 552.136 of the Government Code. The department must release the remaining information.¹

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

¹We note the information being released contains confidential information to which the requestor has a right of access. Thus, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

Ref: ID# 448931

Enc. Submitted documents

c: Requestor
(w/o enclosures)