



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2012

Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711-2157

OR2012-09539

Dear Mr. Bowman:

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# 457500 (TDLR ID # 7958).

The Texas Department of Licensing and Regulation (the "department") received a request for any information pertaining to a named company.¹ You inform us that the department has released most of the requested information. You claim the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The department acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *see also Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994).

¹You state the department received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You raise section 552.130 of the Government Code for the submitted information. We also note portions of this information are subject to section 552.101 of the Government Code.² Because sections 552.101 and section 552.130 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

You state you have redacted certain motor vehicle record information from the information the department has released. Section 552.130 of the Government Code excepts from disclosure “information [that] relates to (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]” Gov’t Code § 552.130(a)(1)-(2). On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a)(1), such as a driver’s license number, without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). Thus, the department may redact driver’s license numbers under subsection 552.130(a)(1). *See id.* However, license plate numbers and vehicle identification numbers are subject to subsection 552.130(a)(2), not subsection 552.130(a)(1); therefore, this information may not be redacted under subsection 552.130(c). We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers, under section 552.130(a)(2), without the necessity of requesting an attorney general decision. Thus, the department may redact Texas license plate numbers in accordance with Open Records Decision No. 684. However, we note vehicle identification numbers are not subject to Open Records Decision No. 684 and thus may not be redacted without requesting an attorney general decision.

You also raise section 552.130 of the Government Code for the submitted information. Upon review, we agree the department must withhold the motor vehicle record information we have marked under section 552.130(a)(2) of the Government Code. *See* Gov’t Code § 552.130(a)(2). However, the remaining submitted information is not subject to section 552.130, and the department may not withhold any of this information on that basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *See id.* § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found.*

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found 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). Upon review, we find the personal financial information we have marked is highly intimate or embarrassing and not a matter of legitimate public concern. We therefore conclude the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information we have marked under section 552.130 of the Government Code and section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 457500

Enc. Submitted documents

c: Requestor
(w/o enclosures)