



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2012

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

OR2012-13018

Dear Ms. Soldano:

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# 462285.

The Texas Department of Motor Vehicles (the "department") received a request for: (1) records received in support of a specified new dealer location; (2) a specific ProForma Balance Sheet; (3) any documents supporting the applications, amendments, or renewals for Naya Motors, Inc. ("Naya"); and (4) a Notice of Sale submitted by Naya and HRK Group, Inc. ("HRK"). The department also received a Notice of Subpoena ("notice") seeking nine categories of information related to one of the named companies. You state the department will release some of the information. You state the department will redact driver's license numbers pursuant to Open Records Decision No. 684 (2009) and social security numbers under section 552.147 of the Government Code.¹ You claim the submitted information is

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684. Section 552.147 of the Government Code permits a governmental body to redact the social security number of a living person without requesting a decision from this office. See Gov't Code § 552.147(b).

excepted from disclosure under sections 552.101, 552.110, 552.130, 552.136, and 552.147 of the Government Code. You also state the proprietary interests of certain third parties might be implicated. Accordingly, you notified Naya and HRK of the request and of their right to submit arguments to this office explaining why their information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered your claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code* § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we note section 552.0055 of the Government Code provides, “[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter.” *Id.* § 552.0055. The submitted notice reflects it was issued under the authority of rule 205.3 of the Texas Rules of Civil Procedure as part of a request for discovery. Based on our review, we conclude the notice is not a written request for public information that triggers the Act. Because the Act is not implicated, we will not address your claimed exceptions to disclosure for the information sought in the notice. However, we will address your claimed exceptions as they pertain to the information that is responsive to the request for information made under the Act.

An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Naya or HRK. Thus, neither Naya nor HRK has demonstrated it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)–(b); Open Records Decision Nos. 661 at 5–6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interests Naya or HRK may have in the information.

Section 552.101 of the Government Code excepts 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 section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as a taxpayer’s “identity, the nature, source, or amount of his income[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by

the Internal Revenue Service [("IRS")] regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find you have failed to demonstrate any of the submitted information is subject to section 6103(a) of title 26 of the United States Code. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Cod on that basis.

Section 552.101 of the Government Code 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. Section 730.004 applies only to an "agency" that compiles or maintains motor vehicle records. *See id.* § 730.003(1). "Personal information" for purposes of section 730.004 is "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." *Id.* § 730.003(6). You state the submitted Vehicle Transfer Notification is compiled by the department in order to transfer the inference of liability after the sale of a vehicle to a new owner. We note the department is an "agency" for purposes of section 730.004. Accordingly, the department must withhold the personal information you have marked under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. This office has determined personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600* (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note, however, the names, addresses, and telephone numbers of members of the public are generally not excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 551*

²As our ruling is dispositive, we do not address your assertion of section 552.147 of the Government Code.

at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Upon review, we find none of the submitted information is highly intimate or embarrassing. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

You assert section 552.110 of the Government Code on the grounds that information is excepted if its release would impair a governmental body's ability to obtain information in the future. In advancing this argument, you appear to rely on the test pertaining to the applicability of the section 552(b)(4) exemption under the federal Freedom of Information Act to third-party information held by a federal agency, as announced in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The *National Parks* test provides that commercial or financial information is confidential if disclosure of the information is likely to impair a governmental body's ability to obtain necessary information in the future. *National Parks*, 498 F.2d 765. However, section 552.110(b) of the Government Code has been amended since the issuance of *National Parks*. Section 552.110(b) now expressly states the standard for excepting from disclosure confidential information. The current statute does not incorporate this aspect of the *National Parks* test; it now requires only a specific factual demonstration that release of the information in question would cause the business enterprise that submitted the information substantial competitive harm. See ORD 661 at 5-6 (discussing enactment of section 552.110(b) by Seventy-Sixth Legislature). Thus, the ability of a governmental body to obtain information from private parties is no longer a relevant consideration under section 552.110(b). *Id.* Although we understand you to argue the submitted information excepted under section 552.110, we note this exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your arguments under section 552.110 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], 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); see *id.* § 552.136(a) (defining "access device"). We note an Employer Identification Number ("EIN") is not an "access device number" for the purposes of section 552.136. The EIN is merely an employer tax identification number. Therefore, the department may not withhold the EIN you have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental

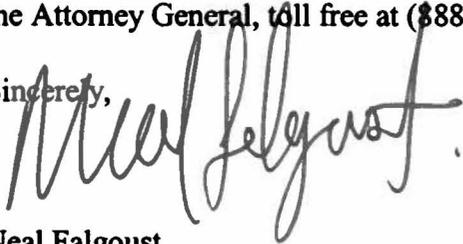
body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c).³ *Id.* § 552.137(a)–(c). Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.

In summary, the department must withhold the personal information you have marked under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address affirmatively consents to its release. The remaining information must be released.⁴

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

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³The 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).

⁴We note Open Records Decision No. 684 permits a governmental body to withhold a Texas license plate number under section 552.130 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 462285

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Naya Motors, Inc.
Texas Motors
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(w/o enclosures)

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(w/o enclosures)