



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 26, 2013

Mr. Stanton Strickland  
Associate Commissioner  
Legal Section  
General Counsel Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2013-20613

Dear Mr. Strickland:

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# 507125 (TDI # 141263).

The Texas Department of Insurance (the "department") received a request for nine categories of information pertaining to nine named entities and one named individual. You state the department has released some of the requested information. You state the department will withhold the vehicle identification numbers you have marked that are subject to section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also state the release of the submitted information may implicate the interests of Plano Kawasaki Suzuki ("PKS").

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision. However, we note vehicle identification numbers were not subject to Open Records Decision No. 684. The Texas legislature amended section 552.130 to allow a governmental body to redact the information described in section 552.130(a)(2) of the Government Code, such as a vehicle identification number, without the necessity of seeking a decision from the attorney general. 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). Therefore, a governmental body may redact a vehicle identification number subject to section 552.130(a)(2) only in accordance with section 552.130(c).

Accordingly, you state, and provide documentation demonstrating, the department notified PKS of the request for information and of its right to submit arguments stating why its 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); 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 the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2007-02374 (2007). In that ruling, we determined the department (1) may withhold certain information under Texas Rule of Civil Procedure 192.5, (2) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy and under sections 552.130 and 552.137 of the Government Code, and (3) must release the remaining information. You state, and there is no indication otherwise, the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the department must continue to rely on Open Records Letter No. 2007-02374 as a previous determination and withhold or release the information that was previously submitted to and ruled on by this office in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Because the submitted information was not at issue in the previous ruling, we will address the public availability of this information.

Next, you acknowledge, and we agree, the department did not comply with its ten-business-day deadline under section 552.301 of the Government Code in requesting this decision. Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because third-party interests and the

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<sup>2</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

department's claims under section 552.101 of the Government Code can provide compelling reasons for non-disclosure under section 552.302, we will consider whether the submitted information is excepted from disclosure under the Act.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from PKS explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate PKS's interests, and none of the submitted information may be withheld on that basis. *See id.* § 552.110; 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.

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. This section encompasses the common-law right of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373.

Upon review, we find the submitted information contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information at issue does not identify, nor have you identified, any individuals to whom the information might pertain. As such, none of the remaining information implicates the privacy rights of identified individuals. Therefore, the department may not withhold any of the remaining information under section 552.101 on this basis.

In summary, the department must continue to rely on Open Records Letter No. 2007-02374 as a previous determination and withhold or release the information that was previously submitted to and ruled on by this office in accordance with that ruling. The department must withhold the information we have marked under 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 507125

Enc. Submitted documents

c: Requestor  
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