



May 12, 1999

Mr. Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

OR99-1285

Dear Mr. Hutchings:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124044.

The Office of Consumer Credit Commissioner ("OCCC") received a request for a variety of information, including licensing and complaints, concerning Associated Pawn, Inc., during a specified period. In response to the request, you submit to this office for review a representative sample of the information at issue.¹ You contend that the submitted records, Attachments B-L, are excepted from required public disclosure by sections 552.101, 552.110, 552.111, and 552.112 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

We first consider the applicability of section 552.101 of the Government Code to the submitted records. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

encompasses information protected by common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

Financial information relating to an individual, including sources of income, salary, and debts, generally satisfies the first prong of the test for common-law privacy. Open Records Decision No. 373 at 3 (1983). The information at issue, in Attachments B-D, concerns the private financial status and decisions of individuals. Furthermore, this office has concluded that there is no legitimate public interest in private financial decisions. Open Records Decision No. 600 (1992). We conclude that Attachments B-D are subject to section 552.101 in conjunction with common-law privacy; therefore, the information in these attachments may not be disclosed.²

We next consider whether Attachments K and L must be withheld under section 552.101 in conjunction with sections 14.154 and 14.155 of the Finance Code. Section 552.101 encompasses information protected by other statutes. A review of chapter 154 of the Finance Code indicates that OCCC is entitled to obtain “criminal history record information maintained by . . . law enforcement agenc[ies]” as well as “a complete set of legible fingerprints” relating to an applicant, which is then sent to the Department of Public Safety and the Federal Bureau of Investigation to perform a search of criminal history files. *See* Fin. Code §§14.151-155.

We agree that if the information at issue contains criminal history record information (“CHRI”) that is generated by the Texas Crime Information Center (“TCIC”) or the National Crime Information Center (“NCIC”) it must not be publicly released. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. However, in this instance you have submitted a “Personal Affidavit” and a finger print card, which we do not believe is contemplated within the definition of CHRI. Section 411.082 of the Government Code, in pertinent part, reads as follows:

²We further note that generally financial statements of individuals (although not of corporations) are generally protected in their entirety by common-law privacy.

(2) "Criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

(A) identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or

Based on the definition of CHRI, we conclude that Attachment K, a completed fingerprint card, and Attachment L, a "Personal Affidavit," do not constitute CHRI protected under section 552.101 and section 14.154 of the Finance Code or section 411.082 of the Government Code. However, some notations stamped and handwritten on Attachments K and L appear to be CHRI which must be withheld under section 552.101. We have marked the appropriate information on Attachments K and L.

We next consider your assertion that social security information within the submitted records, specifically Attachments J and L, must be withheld under section 552.101. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See Open Records Decision No. 622 (1994)*. These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Next, you argue that attachments F, G, H, I, and J are excepted from disclosure pursuant to section 552.111. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In *Open Records Decision No. 615 (1993)*, this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body.

An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. ORD 615 at 4-5. You inform us that attachments F, G, H, I, and J consist of internal memoranda that are attached to an Application for License as it is processed by staff members who review the application and recommend approval or denial. Having reviewed the internal memoranda, we find that only portions of attachments F, G, and H are excepted from disclosure under section 552.111. We have marked these portions accordingly. The remaining portions of F, G, and H, as well as attachments I and J, are not protected by section 552.111 because they consist entirely of factual information.

We next consider your assertion that Attachment E is excepted from disclosure pursuant to section 552.112. Section 552.112(a) excepts from public disclosure

information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.

OCCC is responsible for the regulation of licensees, such as Associated Pawn Inc., which we believe is a "financial institution" for purposes of section 552.112(a). *See* Open Records Decision Nos. 392 at 3 (1983), 158 at 5-6 (1977). You explain that Attachment E, an examination report of Associated Pawn, was prepared by OCCC which is "responsible for the regulation and supervision of financial institutions which loan money to Texas consumers." You also state that the information concerns the financial condition of the company which is the subject of this request. We conclude, therefore, that Attachment E is excepted from disclosure pursuant to section 552.112(a). *See* Open Records Decision No. 392 (1983).

Finally, although you have not raised any other applicable exception, based on the records at issue, we must consider whether a portion of the submitted information should be excepted from required public disclosure under section 552.130 of the Government Code.³ Section 552.130 excepts information relating to a driver's license issued by an agency of this state. We have marked the information you must withhold under section 552.130.

³The Office of the Attorney General will raise an exception on behalf of a governmental body when necessary to protect third-party interests. *See generally* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

As we resolve your request under sections 552.101, 552.111, 552.112 and 552.130, we need not specifically address your other claimed exception at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 124044

Encl: Submitted documents

cc: Ms. Jennifer Kilibarda
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(w/o enclosures)