



June 17, 1999

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

OR99-1679

Dear Mr. Hutchings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125001.

The Office of Consumer Credit Commissioner (the "commissioner") received a request for all records pertaining to the pawn shop license of a named individual. You state that some of the requested records will be released. You contend, however, that some of the records at issue are excepted from disclosure pursuant to sections 552.101, 552.110, 552.111, and 552.130 of the Government Code.

We note at the outset that the commissioner received the open records request on March 10, 1999, but did not submit its request for an open records decision regarding this matter until March 25, 1999. Consequently, you failed to request a decision within the ten business days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, at 381.

You have not shown compelling reasons why the information at issue should be withheld pursuant to section 552.111. We therefore deem this particular exception as being waived. Consequently, the commissioner must release attachments M through W, except as discussed below. Because the other exceptions to disclosure that you raise protect from public disclosure information deemed confidential by law, we will consider the applicability of

these other exceptions. *See also* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

You first contend that the personal financial information in attachments B through I are excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common-law right to privacy. The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 373 (1983), this office concluded that

all financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

The determination of whether the public's interest in obtaining highly intimate and embarrassing information is sufficient to justify its disclosure must be made on a case-by-case basis. Open Records Decision No. 373 (1983). In this case, we agree that the personal financial information contained in attachments B through I is highly intimate and embarrassing and of no legitimate interest to the public. *See* Open Records Decision Nos. 620 (1993), 600 (1992). The commissioner must withhold this information pursuant to section 552.101.¹

As noted above, section 552.101 of the Government Code also excepts from disclosure information made confidential by statute. You contend that the social security number contained in attachments J, K, and L is excepted from disclosure pursuant to section 552.101. The 76th Texas Legislature recently passed House Bill 692, which provides as follows:

SECTION 1. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER. The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession

¹Because we are able to resolve this issue under section 552.101, we do not address your section 552.110 arguments against the disclosure of this information.

that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Act of May 17, 1999, 76th Leg., R.S., H.B. 692. The governor signed this bill on May 25, 1999; accordingly, this law is now in effect. We therefore conclude that the commissioner must withhold the social security numbers pursuant to House Bill 692.

You also argue that the applicant's fingerprint card and the notations as to whether the applicant has a criminal history are excepted from disclosure under section 552.101 in conjunction with sections 14.154 and 14.155 of the Finance Code. Subchapter D of chapter 14 of the Finance Code sets out the procedure by which the commissioner obtains an applicant's criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation. Section 14.154 of the Finance Code provides:

(a) Criminal history record information received by the office is confidential and is for the exclusive use of the of the office.

(b) Except on court order or as provided by Section 14.155(a), the information may not be released or otherwise disclosed to another person.

Section 411.082 of the Government Code defines criminal history record information as follows:

(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

(B) driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

We agree that section 14.154 deems confidential the notations in attachments J, O, and X indicating whether or not the applicant has a criminal history. Section 14.155 does not provide for the release of this information to the requestor. Thus, the commissioner must withhold this information from disclosure under section 552.101. However, as the fingerprint card is information that an applicant submits to the office, it is not criminal history record information. Therefore, the fingerprint card is not confidential under section 14.154 and is not excepted from disclosure.

Finally, section 552.130(a)(1) of the Government Code requires that the commissioner withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." We agree that the information you have marked as coming under the protection of section 552.130(a)(1) must be withheld.

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, appearing to read "Michael J. Burns". The signature is fluid and cursive, with a horizontal line extending to the right.

Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/eaf

Ref.: ID# 125001

encl. Submitted documents

cc: Ms. Kathy H. Dunham, CLA
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