



October 22, 2001

Mr. Brett Bray  
Director  
Motor Vehicle Division  
Texas Department of Transportation  
P.O. Box 2293  
Austin, Texas 78768

OR2001-4775

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153714.

The Texas Department of Transportation (the "department") received a request for "any and all public records/licenses related to auto dealer licenses" for Moon Motors, Inc. d/b/a Moon Motors ("Moon Motors"), as well as for Atlas Motor Sales ("Atlas Motor"). You state that you are providing the requestor with the responsive information that does not appear to be subject to an exception to disclosure. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information regarding Atlas Motor. Therefore, to the extent such information exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), 302.* Because you have not submitted this information, we have no basis for finding it confidential. *See Gov't Code § 552.352.* Thus, we have no choice but to order any such information released, to the extent it exists, per section 552.302 of the Government Code. If you believe any such information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below.

We note that you have notified Moon Motors of the request for information pursuant to section 552.305 of the Government Code. *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 that statutory predecessor

to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Moon Motors has not submitted to this office its reasons explaining why the submitted information should not be released. Thus, we turn to your arguments with respect to the submitted information.

You claim that social security numbers contained within the submitted documents are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code.<sup>1</sup> The relevant note following section 51.251 provides:

[t]he 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 specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

Occupations Code § 51.251. The social security numbers at issue here appear on application materials for licenses issued by the department. The licenses would authorize applicants to maintain motor vehicle dealerships. Accordingly, we find that the social security numbers at issue are confidential under section 51.251 of the Occupations Code and, therefore, must be withheld from disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses the common law right to privacy. Information is protected under the common law right to privacy when (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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). After reviewing the submitted information, we do not believe that any of it is confidential based on a common law right to privacy. Common law privacy protects the rights of individuals, not corporations. *See* Open Records Decision Nos. 192 (1978), 620 (1993) (corporation has no common law privacy interest in its financial information); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). As the licensee at issue is a

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

corporation, the licensee has no right of privacy in the submitted information. Accordingly, we conclude that the submitted information may not be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.

You also claim that driver's license and dealer plate numbers contained within the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, the department must withhold from disclosure the driver's license and dealer plate numbers contained within the submitted information that are issued by an agency of this state pursuant to section 552.130 of the Government Code.

In summary, we conclude that: (1) the department must withhold from disclosure social security numbers contained within the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code; and (2) the department must withhold from disclosure driver's license and dealer plate numbers issued by an agency of this state pursuant to section 552.130 of the Government Code. The remaining requested information must be released.

You request that this office issue a previous determination allowing the department to withhold social security numbers, driver's license numbers, dealer plate numbers, vehicle identification numbers, leases, financial information, telephone verifications, and copies of checks contained in the files of the department's Motor Vehicle Division. Therefore, as per your request, this letter ruling shall serve as a previous determination under section 552.301(a) that: (1) Texas driver's license numbers, Texas vehicle identification numbers, and Texas dealer plate numbers are excepted from disclosure under section 552.130 of the Government Code; and (2) social security numbers that appear on application materials for licenses issued by the department that authorize applicants to maintain motor vehicle dealerships are confidential under section 51.251 of the Occupations Code and, therefore, must be withheld from disclosure under section 552.101 of the Government Code. *See* Gov't Code §552.301(a), (f); *see also* Open Records Decision No. 673 (2001). However, we note

that section 552.130 protects the privacy of the individual to whom the information relates. Therefore, a person's section 552.130 information must be released to her or her authorized representative. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to information that is protected by laws intended to protect person's privacy).

This previous determination applies only to the following types of information requested of the Department of Transportation: (1) a Texas driver's license number; (2) a Texas dealer plate number; (3) a Texas vehicle identification number; and (4) a social security number appearing on application materials for licenses issued by the department that authorize applicants to maintain motor vehicle dealerships. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to these types of information requested of the Department of Transportation. *See id.*

We note, however, that we decline at this time to issue a previous determination allowing the department to withhold leases, financial information, telephone verifications, and copies of checks, which under some circumstances may be confidential under section 552.101 in conjunction with the common law right to privacy.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 153714

Enc: Submitted documents

c: Ms. Joan T. Neuhaus  
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(w/o enclosures)