



November 29, 2001

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

OR2001-5532

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# 156108.

The Texas Department of Transportation (the "department") received a written request for "all applications, licenses and bond information for" a named individual and business.¹ You contend that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as section 51.251 of the Occupations Code. The relevant footnote to that statute provides as follows:

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

¹You have also submitted to our office another records request dated May 11, 2001 from a different individual. Because you do not reference this request in your brief, we assume the department has provided this requestor with all responsive public information.

Occupations Code § 51.251. The social security number at issue here appears on application materials for a license issued by the department. The license authorizes the applicant to maintain a motor vehicle dealership. Accordingly, we find that the social security number is made confidential under section 51.251 of the Occupations Code, and therefore must be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common law privacy. Common law 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). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). The submitted documents include personal financial information that is protected from disclosure under common law privacy. We have marked the information that the department must withhold pursuant to common law privacy.

The submitted documents also include information protected from disclosure under 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[.]

Accordingly, the department must withhold all Texas driver's license numbers and license plate numbers, including dealer plate numbers, under section 552.130.

We also note that some of the information that the department obtained from the internet is copyrighted. The copyright law gives the copyright holder the exclusive right to reproduce his work, subject to another person's right to make fair use of it. 17 U.S.C. §§ 106, 107. A governmental body must allow *inspection* of copyrighted materials where no exception to required public disclosure otherwise applies. Attorney General Opinion JM-672 at 2-3 (1987). Also, the requestor may make copies of copyrighted materials unassisted by the state. Attorney General Opinion MW-307 (1981). "Of course, one so doing assumes the risk of a copyright infringement suit." *Id.* at 2. Consequently, the department must allow the requestor to view the copyrighted information and also allow him to reproduce the material without the department's assistance. It will be the requestor's responsibility to adhere to the federal copyright law.

Finally, you request that this office issue a previous determination allowing the department to withhold similar information in response to future records requests received by the department. This office has previously issued a previous determination for licensees' social security numbers and for section 552.130 information. *See* Open Records Letter No. 2001-4775 (2001). We decline to issue such a previous determination for any other information at this time.

This letter ruling is limited to the particular records 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 records or any other circumstances.

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).

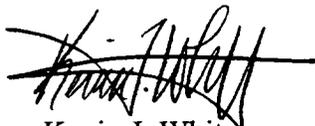
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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,

A handwritten signature in black ink, appearing to read "Kevin J. White", is written over a horizontal line.

Kevin J. White
Assistant Attorney General
Open Records Division

KJW/RWP/sdk

Ref: ID# 156108

Enc: Submitted documents

c: Mr. Jeffery B. Kaiser
Kaiser & May
1440 Lyric Center
440 Louisiana
Houston, Texas 77002-1634
(w/o enclosures)

Ms. JoAnna Cantu
d/b/a Imports, Etc.
3546 Culebra Road
San Antonio, Texas 78228
(w/o enclosures)