



December 7, 2001

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

OR2001-5707

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# 155845.

The Department of Transportation (the "department") received a request for the bonding information and dealer applications for two of the department's Motor Vehicle Board's licensees. The requestor subsequently modified his request to exclude social security numbers and Texas driver's license numbers. You state that the department does not believe that any of the responsive information should be withheld from disclosure, but that a prior ruling from this office, Open Records Letter No. 2001-4160 (2001), declared surety bonds and riders to be confidential. Although you previously requested a decision as to whether such information should be withheld from disclosure, you now contend that such information is not confidential under common law privacy. We note that you have submitted correspondence indicating that you have notified the third parties whose information is at issue in the current request 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 Public Information Act in certain circumstances). This office received comments from Elwaine Barret, Jr. d/b/a Better Auto Company ("Better Auto"). We have considered all the submitted arguments and reviewed the submitted information.

Initially, we address one of the arguments submitted by Better Auto. Referring to Open Records Letter No. 2001-4160 (2001), Better Auto argues that the department "lacks standing to make its request because the Attorney General has previously decided that this information is not subject to disclosure." We note, however, that in Open Records Letter

No. 2001-4160A (2001), this office re-examined and overruled its ruling in Open Records Letter No. 2001-4160 (2001). We also note that the information at issue in Open Records Letter No. 2001-4160 (2001) did not pertain to either of the entities whose information is at issue here, and, thus, is not the precise information at issue in the present request. Accordingly, Open Records Letter No. 2001-4160 (2001) does not constitute a previous determination. *See* Open Records Decision No. 673 (2001).

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 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). We note that 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 one of the requested surety bonds pertains to a corporation, not an individual, we conclude that it is not protected by common law privacy. As to the remaining requested surety bond, based on our review of your arguments, we conclude that, although the surety bond at issue consists of personal financial information, there is a legitimate public interest in its disclosure. Thus, the remaining surety bond is not protected by common law privacy.

An interested third party is allowed 10 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, we have not received arguments for withholding the requested information from one of the third parties whose information is at issue here, Texas Southway Motors, Inc. We thus have no basis for concluding that any of the requested information relating to this entity must be withheld from disclosure. *See* Open Records Decision Nos. 552 at 5 (1990) (stating that if governmental body takes no position, attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Therefore, the department must release the requested information regarding Texas Southway Motors, Inc.

Better Auto, the other entity whose information is at issue here, asserts that the requested information is excepted from public disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(b). The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See* Open Records Decision No. 661 (1999).

After reviewing Better Auto's arguments, we conclude that it has not established that release of the requested information would cause it substantial competitive injury. Accordingly, the department may not withhold the requested information regarding Better Auto under section 552.110 of the Government Code. Therefore, the department must release the requested information regarding Better Auto.

To summarize, we conclude that the department must release the requested information.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 155845

Enc: Submitted documents

c: Mr. Mark L. Aschermann
Attorney at Law
3730 Kirby Drive # 520
Houston, Texas 77096
(w/o enclosures)

Mr. Charles B. Herndon
Attorney at Law
3303 Louisiana, Suite 115
Houston, Texas 77006
(w/o enclosures)