



December 21, 2001

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

OR2001-6050

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# 156475.

The Texas Department of Transportation (the "department") received a request for the dealer license number and other information relating to Transportation Station, Inc. ("Transportation Station"). You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We note that you also notified Transportation Station of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹

Section 552.305(d) allows a third party ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office had received no correspondence from Transportation Station. Thus, Transportation Station has not demonstrated that any of the requested information must be withheld from public disclosure. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990) (attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if governmental body takes no position, third party makes *prima facie* case that information qualifies as trade secret under section 757 of

¹*See* Gov't Code § 552.305(d); 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 to disclosure under Gov't Code ch. 552 in certain circumstances).

Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (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).

The department raises section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. Section 56.001 of the Occupations Code, as enacted by the Seventy-seventh Legislature, 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 specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Act of May 22, 2001, 77th Leg., R.S., § 14.001(a), 2001 Tex. Sess. Law Serv. 3970, 4098 (Vernon's) (to be codified as Occ. Code § 56.001).² You indicate that the department obtained the social security numbers that appear in the submitted documents in connection with the issuance of a license. Accordingly, we find that these social security numbers are confidential under section 56.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

You also raise section 552.101 in conjunction with the common law right to privacy. Information is protected from disclosure under section 552.101 in conjunction with common law privacy when the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is of no legitimate public interest. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In this instance, the submitted information relates to a corporate entity. Common law privacy protects the rights of individuals, not those of corporate entities. *See* Open Records Decision No. 620 at 3-4 (1993). Corporations have no right to privacy. *See United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (*cited in Rosen v. Matthews Constr. Co., Inc.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)); *see also* Open Records Decision No. 192 at 4 (1978). Thus, we conclude that none of the submitted information is protected by common law privacy under section 552.101.

²The language of section 56.001 of the Occupations Code corresponds in substance to the language of the former note to section 51.251 of the Occupations Code. House Bill No. 2812, which enacted section 56.001, also repealed the note to section 51.251. *See* Act of May 22, 2001, 77th Leg., R.S., § 14.001(b), 2001 Tex. Sess. Law Serv. 3970, 4098 (Vernon's) (repealing section 1, chapter 314, Acts of the 76th Legislature, Regular Session, 1999).

Section 552.130 of the Government Code is applicable to motor vehicle record information. Section 552.130 excepts from required public disclosure information that 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(a)(1)-(2). The department must withhold Texas driver's license and dealer plate numbers under section 552.130.

In summary, the department must withhold the social security numbers that appear in the submitted documents under section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code. You must also withhold Texas driver's license and dealer plate numbers under section 552.130. The remaining information must be released.

Lastly, we note that Open Records Letter No. 2001-4775 (2001) granted the department a previous determination for certain social security numbers under section 51.251 of the Occupations Code. However, the Seventy-seventh Legislature repealed the applicable language of section 51.251, and thus Open Records Letter No. 2001-4775 no longer constitutes a previous determination with respect to social security numbers. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination). Therefore, this ruling shall serve as a previous determination under section 552.301(a) of the Government Code that 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 56.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code. *See* Gov't Code § 552.301(a), (f); Open Records Decision No. 673 (2001). Accordingly, 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 this type of information requested of the Texas Department of Transportation. *See id.*

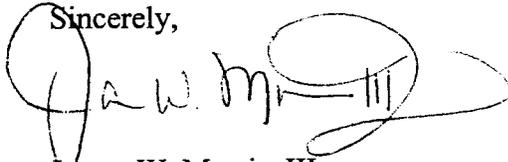
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on 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 Department 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 of 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 "J.W. Morris III", with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 156475

Enc: Submitted documents

c: Mr. Rex L. Kesler
Attorney & Counselor at Law
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(w/o enclosures)