



December 28, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-6122

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156700.

The Texas Department of Public Safety (the "department") received a request for information related to a complaint filed by the requestor and for the personnel file of a named trooper. You state that you will release the information to the requestor, with the exception of certain information in the personnel file of the trooper. You claim that most of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision No. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial

statements and other personal financial information), 373 (1983) (common law privacy protects assets and income source information). Therefore, we agree that most of the highlighted information in the submitted documents relates to personal financial information that the department must withhold under section 552.101 in conjunction with common law privacy. However, factors the department considers and sources of information used when compiling the financial history are not private. Further, the existence of bank accounts the trooper has, the names of the banking institutions, and whether the trooper has ever participated in any fraudulent check or document are not private. We have marked the information that is not private and must be released.

The department seeks a previous determination resolving two conflicting rulings on whether the existence of bank accounts held by an applicant, names of the banking institutions, and whether the applicant had ever participated in any fraudulent check or document must be withheld under common law privacy. Upon further review, we conclude that this information is not private because the first two types of information are not intimate or embarrassing, and there is a legitimate public interest in the third, relying on the test in *Industrial Foundation*. Therefore, this information is not private, as decided in Open Records Letter No. 2001-4470.

Pursuant to section 552.301 of the Government Code, the department may rely on this ruling as a "previous determination" regarding troopers' personal financial information. Accordingly, the department must withhold the portion of the department's application entitled "Financial History" except for information marked to be released in Open Records Letter No. 2001-4470. That is, the following information is not private: 1) information reflecting whether the applicant has a checking or savings account; 2) the banks holding such accounts; and 3) information reflecting whether the applicant has "ever participated in any fraudulent check or document." However, we note that the private financial information must be released to the applicant or the applicant's authorized representative. See Gov't Code § 552.023. The department does not need to seek a decision from this office for future requests for this information as long as the elements of law, fact, and circumstances do not change so as to no longer support this conclusion. See Open Records Decision No. 673 (2001).

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

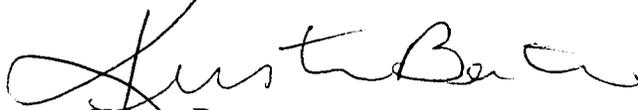
Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 156700

Enc. Submitted documents

c: Mr. Ron Broussard
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Houston, Texas 77091
(w/o enclosures)