



March 22, 2002

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

OR2002-1426

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# 160157.

The Motor Vehicle Division of the Texas Department of Transportation (the "department") received a request for information relating to persons in a five-county area who have requested information from the department or made a complaint regarding a violation of the "Lemon Law" since December 1, 2001. You state that the department does not maintain records on persons who request information but do not file complaints. Chapter 552 of the Government Code does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You claim that responsive information relating to complaints is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The department raises section 552.101 in conjunction with section 6.07(1) of article 4413(36) of Vernon's Texas Civil Statutes. Section 6.07(1) provides as follows:

(1) Information filed with the [Motor Vehicle] Board under this section is not a public record and is not subject to release under the open records law, Chapter 552, Government Code, until the complaint is finally resolved by order of the Board.

V.T.C.S. art. 4413(36), § 6.07(1). You have submitted what you identify as fourteen complaints for the five-county area specified by the requestor. You state that these complaints were filed with the Motor Vehicle Board during the period beginning December 1, 2001, and ending January 9, 2002. You state that none of these complaints has been finally resolved by the board. You also have submitted what you identify as "a list of the complaints by assigned docket number compiled from the lemon law database."

We understand the department to claim that both the complaints and the list of complaints are confidential under section 6.07(1). Based on your representation that the complaints were filed with the board and have not been finally resolved, we find that the complaints are confidential under section 6.07(1). To the extent that the list of complaints contains information that was filed with the board and that relates to pending complaints, we find that section 6.07(1) also makes that information confidential. We have marked the information that is confidential under section 6.07(1). The marked information is excepted from disclosure under section 552.101 of the Government Code as information made confidential by law. You do not demonstrate, however, that the remaining information in the list of complaints was filed with the board under section 6.07(1). Therefore, that information is not excepted from disclosure and must be released. *See also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure).

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

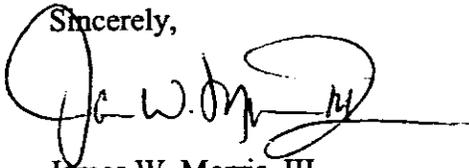
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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); *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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "James W. Morris, III", with a long horizontal flourish extending to the right.

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

JWM/sdk

Ref: ID# 160157

Enc: Marked documents

c: Ms. Jillana D. Michel
906 Allen Street, #1424
Dallas, Texas 75024
(w/o enclosures)