



July 15, 2002

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

OR2002-3854

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# 165570.

The Texas Department of Transportation (the "department") received a request for information relating to Best Buy RV, Inc., and an officer and shareholder of the corporation. You indicate that the department will release most of the requested information. The department claims, however, that the remaining 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.

First, we address the department's statement that the requestor was inadvertently allowed to inspect the submitted documents in connection with a previous request for information. If a governmental body has voluntarily released information to a member of the public, it may not withhold that same information from further public disclosure, unless release of the information is expressly prohibited by law or the information is made confidential by law. *See* Open Records Decision No. 518 at 3 (1989). Because the department asserts that the submitted information is confidential by law under section 552.101 of the Government Code, we will address your claim. *See* Gov't Code §§ 552.007, .101, .352; Open Records Decision No. 400 at 2 (1983) (addressing applicability of section 552.101 to information that governmental body had previously released).

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 the common-law right to privacy. Common-law privacy protects information that is (1) is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) 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). Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to a public body about an individual and basic facts regarding a particular financial transaction between the individual and the public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

The department informs us that the submitted information relates to a private individual's personal bank account. Based on this representation and our review of the submitted information, we find that it satisfies the first element of the common-law privacy test. The department also states that the submitted information was obtained in the course of an enforcement investigation, but was not used at the hearing in the case. Furthermore, upon our review, we find that there is no legitimate public interest in the release of the submitted information. Therefore, we conclude that the submitted information is confidential under section 552.101 of the Government Code in conjunction with common-law privacy and must not be released.

The department also seeks to withhold any social security numbers that are contained in the requested records under section 56.001 of the Occupations Code. Open Records Letter No. 2001-6050 (2001) authorizes the department to withhold social security numbers on application materials for licenses issued by the department, authorizing applicants to maintain motor vehicle dealerships, under section 56.001. *See Gov't Code* § 552.301(a), (f); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under *Gov't Code* § 552.301). Therefore, if the requested records contain a social security number that the department obtained in connection with an application for a license to maintain a motor vehicle dealership, then the department may withhold the social security number in accordance with Open Records Letter No. 2001-6050 (2001). Otherwise, any social security number contained in the requested records is not excepted from disclosure and must be released. *See Open Records Decision No. 622 at 2-4 (1994)* (social security number is confidential under 1990 amendments to 42 U.S.C. § 405(c)(2)(C)(viii)(I) only if it was obtained or is maintained by governmental body pursuant to any provision of law enacted on or after October 1, 1990).

The department also indicates that the requested records contain driver's license numbers, vehicle identification numbers, dealer plate numbers, leases, and phone verification numbers. However, the department has submitted no other responsive records that contain these types

of information. *See* Gov't Code §§ 552.301, .302. Nevertheless, we note that Open Records Letter No. 2001-4775 (2001) authorizes the department to withhold Texas driver's license numbers, Texas dealer plate numbers, and Texas vehicle identification numbers under section 552.130 of the Government Code. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Therefore, to the extent that the requested records contain Texas driver's license numbers, Texas dealer plate numbers, and Texas vehicle identification numbers, the department may withhold those three types of information in accordance with Open Records Letter No. 2001-4775 (2001).

In summary, the department must withhold the submitted documents under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold social security numbers, Texas driver's license numbers, Texas dealer plate numbers, and Texas vehicle identification numbers in accordance with Open Records Letter Nos. 2001-6050 (2001) and 2001-4775 (2001). If the department has not already released the rest of the requested information, it must do so 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).

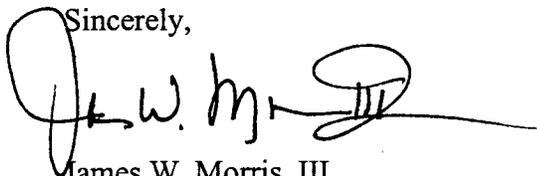
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *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 "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W" and a distinct "III" at the end.

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

JWM/sdk

Ref: ID# 165570

Enc: Submitted documents

c: Mr. Jason M. Powers
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(w/o enclosures)