



July 23, 2002

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

OR2002-4043

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# 166019.

The Texas Department of Transportation ("TxDOT") received a request for information concerning applications submitted by Price 1 Auto Stores and/or Asbury Automotive to sell used cars in the State of Texas. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. You also notified Asbury Automotive Used Car Centers ("Asbury") of the request pursuant to section 552.305 of the Government Code. Asbury, in turn, has submitted correspondence to this office in which it argues that the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered all of the submitted arguments and reviewed the submitted information.

We begin by addressing Asbury's argument that the instant request is limited to the names of officers and other names included in Asbury's applications. Although the requestor states in his request that the information needed is "officers and names on all license applications," the requestor clearly states that he seeks a copy of the "entire applications." Therefore, we find that the requestor's request is not limited to the officers and other names in the applications but includes the applications as a whole.

Next, we address TxDOT's contention that social security numbers contained in the submitted information may be withheld pursuant to a previous determination issued by this office. In Open Records Letter No. 2001-6050, we concluded that social security numbers that appear on application materials for licenses issued by TxDOT that authorize applicants to maintain motor vehicle dealerships are confidential under section 56.001 of the Occupations Code and may be withheld from disclosure under section 552.101 of the

Government Code without the necessity of requesting a decision from our office. Because the facts, law, and circumstances surrounding this ruling do not appear to have changed, we find that you may rely on the ruling to withhold from disclosure the social security numbers contained in the submitted materials. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001).

TxDOT also contends that a previous decision from this office allows it to withhold the Texas driver's license numbers, Texas dealer plate numbers, and Texas vehicle identification numbers contained in the submitted information under section 552.130 of the Government Code without the necessity of requesting a decision. In Open Records Letter No. 2001-4775 (2001), we concluded that the department could withhold from disclosure Texas driver's license numbers under section 552.130 of the Government Code¹ without the necessity of requesting a decision from this office. Because the law, facts, and circumstances surrounding this ruling do not appear to have changed, we agree that TxDOT may rely on Open Records Letter No. 2001-4775 (2001) to withhold the Texas driver's license numbers contained in the submitted information.² *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001). We note that the submitted information contains additional information relating to a Texas driver's license that also must be withheld under section 552.130 of the Government Code. We have marked the additional Texas driver's license information.

Next, both TxDOT and Asbury contend that portions of the submitted information are protected under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy. Common-law privacy protects information if (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. 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),

¹Section 552.130 excepts from disclosure "a motor vehicle operator's or driver's license or permit issued by an agency of this state"

²We note that the submitted information does not contain any Texas license plate numbers or vehicle identification numbers.

545 (1990). Asbury contends that out-of-state driver's license numbers as well as the home addresses and dates of birth of its officer and directors are protected under common-law privacy as personal financial information. Specifically, Asbury argues that this information can be used to obtain credit, credit reports, and goods and services in the name of the individual to whom the information belongs. However, we find that the out-of-state driver's license numbers, home addresses, and dates of birth do not consist of the types of personal financial information protected under common-law privacy. *See, e.g.*, Open Records Decision Nos. 600 at 10 (1992) (decision of public employee to enroll in optional insurance coverage is private), 545 at 4-5 (1990) (public employee's investment decisions with respect to a deferred compensation plan are private), 523 at 3-4 (1989) (credit reports and financial statements of individual veterans participating in Veterans Land Program are private), 373 at 3 (sources of income, salary, mortgage payments, assets, and credit history of applicant for housing rehabilitation grant are private). Furthermore, we do not find any of the submitted information highly intimate or embarrassing for the purpose of common-law privacy. *See* Open Records Decision Nos. 620 (1993) ("Corporations do not have a right to privacy."), 488 (1988) ("Absent a showing of special circumstances, common-law and constitutional privacy do not protect home addresses and telephone numbers), 169 (1977) (same).

Asbury also argues that out-of-state driver's license numbers as well as the home addresses and dates of birth of its officer and directors are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides, in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Asbury contends that, in many states, driver's license numbers can be used in conjunction with other access devices to obtain credit and valuable services. Similarly, Asbury contends that an individual's home address and date of birth can be used in conjunction with other personal information to obtain credit, credit reports, and goods and services. Although we understand that driver's license numbers, addresses, and dates of birth are often required to be supplied in order to obtain credit and other goods and services, we cannot conclude that driver's licenses, home addresses, and dates of birth constitute "access

devices” for the purpose of section 552.136 of the Government Code. *See Gov’t Code § 552.136(a)*. Therefore, TxDOT may not withhold any of the submitted information under section 552.136 of the Government Code.

Furthermore, we note that the submitted information contains e-mail addresses that must be withheld under section 552.137 of the Government Code. Section 552.137 provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act].”³ Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, TxDOT must withhold the e-mail addresses in the submitted information that we have marked under section 552.137.

Finally, we note that one of the submitted documents is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550 (1990)*.

In summary, TxDOT may rely on Open Records Letter No. 2001-6050 (2001) and Open Records Letter No. 2001-4775 (2001) to withhold the social security numbers and Texas driver’s license numbers contained in the submitted information. TxDOT must likewise withhold additional Texas driver’s license information, which we have marked, under section 552.130 of the Government Code. Finally, TxDOT must withhold the marked e-mail addresses under section 552.137 of the Government Code unless the individual to whom the addresses belong has consented to their release. TxDOT must release the remainder of the submitted information.⁴

³The identical exception has been added as section 552.136 of the Government Code.

⁴TxDOT indicates that “since [the Attorney General’s Office] declined to issue a ‘previous determination’ with regard to leases, telephone verification, ownership percentages, personal financial information, banking information, copies of checks, e-mail addresses, copyrighted information, copies of telephone book listings, and warranty deeds” it was required to request a decision from this office concerning the public availability of such information. (emphasis in original). TxDOT therefore seeks a previous determination in this ruling so that it will not be required to ask for a future ruling with regard to the same types of information. We note that the submitted information does not contain many of the categories of information for which TxDOT seeks a previous determination. Furthermore, we do not believe that the facts surrounding this ruling are appropriate for a previous determination. Therefore, we decline to issue a previous determination 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).

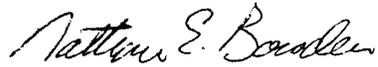
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 166019

Enc: Submitted documents

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