



September 13, 2002

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

OR2002-5131

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# 168543.

The Department of Transportation (the "department") received a request for copies of documents in a particular investigation file. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must first address the department's obligations under section 552.301. Pursuant to section 552.301(e), a governmental body that receives an open records request for information that it wishes to withhold under one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which part of the documents. The department failed to submit to this office a copy of the written request for information and copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which part of the documents. Thus, the department has not complied with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock*

v. State Bd. Of Ins., 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason sufficient to overcome the section 552.302 presumption of openness exists only where the information is confidential by law or its release implicates third party interests. *See, e.g.*, Open Records Decision No. 150 (1977). Sections 552.103, 552.107, and 552.111 of the Government Code, which you have raised, do not present compelling reasons for overcoming the presumption of openness under section 552.302. *See* Open Records Decision Nos. 630 at 4-7 (1994) (fact that information falls under section 552.107 does not provide compelling reason for overcoming presumption of openness), 473 at 2 (1987) (failure to meet 10-day deadline waived protections of section 552.103 and 552.111). *See also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Consequently, the department may not withhold the information at issue under these exceptions. However, as section 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will consider your arguments under those exceptions.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes. Section 552.101 also encompasses the common law right to privacy. Information is protected under the common law right to privacy when (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. *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 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), 545 (1990), 373 (1983). After reviewing the submitted information, we have marked the financial information which is confidential based on the common-law right to privacy.

You assert that social security numbers of applicants for a license issued by the department are excepted from disclosure under 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 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). The submitted information includes social security of applicants for or holders of a motor vehicle dealership license issued by the department. Accordingly, we find that the department must withhold the social security numbers which we have marked under section 552.101 in conjunction with section 56.001 of the Occupations Code.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information 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[.]

The department must withhold the motor vehicle information, which have marked, under section 552.130.

We next note that some of the submitted information is subject to a previous determination of this office. In Open Records Letter No. 2001-4775 (2001), we determined that the department must withhold Texas driver's license numbers, Texas vehicle identification numbers, and Texas dealer plate numbers under section 552.130 of the Government Code. Assuming the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, the department must withhold the information in accordance with Open Records Letter No. 2001-4775 (2001).¹

The submitted information consists of credit card, debit card, charge card, or access device numbers made confidential under section 552.136. Section 552.136 provides as follows:

(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:

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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

(2) initiate a transfer of funds other than a transfer originated
solely by paper instrument.

(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. We have marked the information that the department must withhold under section 552.136.

Finally, we note that the submitted information contains an e-mail address that is excepted from disclosure 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].” *See* Gov't Code § 552.137(a). As there is no indication that the individual to whom the e-mail address belongs has consented to its release, the department must withhold the e-mail address in the submitted information that we have marked under section 552.137 of the Government Code. *See* Gov't Code § 552.137(b) (confidential information described by this section that relates to member of the public may be disclosed if member of public affirmatively consents to its release).

To summarize: the department must withhold personal financial information, which we have marked, under section 552.101 in conjunction with common-law privacy. The department must withhold the social security numbers we have marked under section 552.101 in conjunction with section 56.001 of the Occupations Code. Assuming certain criteria have been met, the department must withhold Texas driver's license numbers, Texas vehicle identification numbers, and Texas dealer plate numbers under section 552.130 of the Government Code in accordance with Open Records Decision No. 673 (2001). We have marked additional information the department must withhold under section 552.130. We have marked an account number that the department must withhold under section 552.136. Finally, an e-mail address must be withheld under section 552.137. The remainder of the submitted information must be released to the requestor.

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).

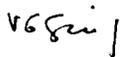
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 168543

Enc: Submitted documents

c: Mr. George Bosowski
Controller
Munday Ford
1115 Highway 71 East
Bastrop, Texas 78602
(w/o enclosures)