OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 16, 2002

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

OR2002-5171

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# 168579.

The Texas Department of Transportation (the "department") received a written request for the entire licensing file on Associates Auto Sales in McAllen, Texas. You indicate that most of the requested information will be made available to the requestor.[1] However, you have submitted to this office six pages of documents, which you contend are partially excepted from required public disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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* it is of no legitimate concern to the public. *Id.* at 683-85.

Among the documents you submitted to this office is a lease agreement between two private individuals. This office has determined that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by

[1]You state, however, that some of this information was withheld from the requestor in accordance with a previous determination of this office. *See* Open Records Letter No. 2001-6050 (2001).

common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We thus conclude that the department must withhold the lease agreement pursuant to section 552.101 of the Government Code.

Also among the submitted documents is an individual's "Statement of Assets and Liabilities" and "Statement of Revenues and Expenses." In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

> all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373 at 3. The "Statement of Assets and Liabilities" and "Statement of Revenues and Expenses" consists of information that is highly intimate. Moreover, the information you have provided does not indicate any special circumstances that would make the individual's personal financial information a matter of legitimate public concern. In accordance with Open Records Decision No. 373, we conclude that the department must withhold the "Statement of Assets and Liabilities" and "Statement of Revenues and Expenses" from the public pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining submitted document, however, does not contain any information coming within the common-law right of privacy. Consequently, we conclude that the remaining document must be released in its entirety.

Although you request that this office issue a "previous determination" for the types of information discussed in this ruling, we decline to 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).

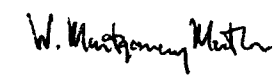
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/RWP/sdk

Ref: ID# 168579

Enc: Submitted documents

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(w/o enclosures)