



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 23, 2002

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

OR2002-7362

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# 174041.

The Texas Department of Transportation (the "department") received a request for certified copies of applications for licensure and licenses pertaining to a specified automobile dealership from 1999 to present. You indicate that you have released some responsive information to the requestor. You state that you will redact certain motor vehicle record information and social security numbers in accordance with previous determinations that have been issued by this office to the department. *See* Open Records Letter Nos. 2001-6050 (2001), 2001-4775 (2001); *see also* Open Records Decision No. 673 at 7-8 (2001) (criteria of previous determination for information in specific, clearly delineated categories). You claim, however, that portions of the remaining requested information are excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. Further, you have notified an interested third party, Familia Motors ("Familia"), of the department's receipt of the request and of Familia's right to submit comments to this office as to why information relating to Familia should not be released to the requestor. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of

exception to disclosure in certain circumstances). We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, Familia has not submitted any reasons to this office explaining why any portion of the requested information pertaining to Familia should not be released to the requestor. Accordingly, we conclude that Familia has provided us with no basis to conclude that it has a protected proprietary interest in any portion of the requested information. See, e.g., Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); see also Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.¹ We note that information is protected from disclosure under the common-law right to privacy when (1) it contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) it 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 from disclosure under the common-law right to privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). Based on our review of your arguments and the information at issue, we find that portions of this information, which we have marked, are confidential under the common-law right to privacy. Accordingly, we conclude that the department must withhold this marked information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We note that portions of the remaining information at issue are subject to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides:

- (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure under the common-law right to privacy.

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; 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. Accordingly, we conclude that the department must withhold the account number that we have marked pursuant to section 552.136 of the Government Code.

We note that a portion of the remaining information at issue 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. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See 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 such 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).

Finally, you request that this office issue a previous determination allowing the department to withhold ownership percentage information and information concerning telephone verification, copyrighted information, property leases, criminal convictions, and warranty deeds that are contained within the files of the Motor Vehicle Board in response to future requests for such information without the necessity of seeking a ruling from this office with regard to such information. We decline to issue such a previous determination at this time.

In summary, the department must withhold the motor vehicle record information and social security numbers that are contained within the submitted information and for which it has been granted previous determinations. The department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must withhold the account number that we have marked pursuant to section 552.136 of the Government Code. The department must release the remaining submitted information to the requestor in its entirety; however, in doing so, the department must comply with copyright law.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 174041

Enc. Marked documents

cc: Mr. Paul Catalano
Brewer & Pritchard
Three Riverway, 18th Floor
Houston, Texas 77056
(w/o enclosures)

Mr. Baldemar T. Salinas
Ms. Maryann D. Salinas
Familia Motors
Route 6, Box 92G
Mission, Texas 78572
(w/o enclosures)