



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 5, 2003

Mr. Chris Kadas
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2003-0780

Dear Mr. Kadas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176071.

The Texas Department of Licensing and Regulation (the "department") received a request for records in Case No. HCR2002001821C. You state that some responsive information has been mailed to the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The department states that it entered into an agreement with Choicepoint Business and Government Services, Inc. ("CPBG") for access to certain secure online national databases for investigative purposes. The terms of the agreement require the department to "take appropriate measures to protect against the misuse of CPBG's services and to adhere to the privacy principles adopted by CPBG." However, information is not confidential under the Public Information Act (the "Act") simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision No. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."). Consequently, unless the

information at issue falls within an exception to disclosure, it must be released, notwithstanding any agreement specifying otherwise.

You argue that a portion of the submitted information is excepted from public disclosure under section 552.101 in conjunction with the Federal Driver's Privacy Protection Act (the "FDPP Act"). *See* 18 U.S.C. § 2721 *et seq.* Section 2721 of the FDPP Act prohibits the release of "personal information" about any person obtained in connection with a motor vehicle record by a "State department of motor vehicles," except under certain circumstances. "Personal information" is defined as including an individual's social security number, driver identification number, name, address, and telephone number. *See* 18 U.S.C. § 2725(3), (4).

An authorized recipient of personal information may resell or redisclose the information only for a permissible use as provided by section 2721(b). *See* 18 U.S.C. § 2721(c); *see also* 18 U.S.C. § 2721(b). You state that the submitted information was obtained through CPBG's online database service. However, you do not inform this office, nor does the information on its face reflect, that the information at issue is personal information obtained in connection with a motor vehicle record by a state department of motor vehicles as contemplated by the federal statute.¹ Accordingly, we determine that the department may not withhold any of the submitted information pursuant to section 552.101 of the Government Code in conjunction with the FDPP Act.

You next argue that a portion of the submitted information is excepted from public disclosure under section 552.101 in conjunction with the Gramm-Leach-Bliley Act (the "GLB Act"). *See* 15 U.S.C. § 6801 *et seq.* The Federal Financial Modernization Act, also known as the GLB Act, became law in November 1999. The purpose of the GLB Act was to promote competition in the financial services industry. *See* H.R. Conf. Rep. No. 106-434, at 245 (1999), *reprinted in* 1999 U.S.C.C.A.N. 245, 245. Reflecting Congressional concern regarding the dissemination of consumer's personal financial information, the Act provides certain privacy protections "to protect the security and confidentiality of [consumers'] nonpublic personal information." 15 U.S.C. §6801. The statute defines nonpublic personal information ("NPI") as "personally identifiable financial information ["PIFI"] - (i) provided by a consumer to a financial institution; (ii) resulting from any transaction with the consumer or any service performed for the consumer; or (iii) otherwise obtained by the financial institution." 15 U.S.C. § 6809(4)(A). Federal Regulations define "PIFI" as "any information: (i) [a] consumer provides to [a regulated financial institution] to obtain a financial product or service . . . (iii) [a]bout a consumer resulting from any transaction involving a financial product or service between [a regulated financial institution] and a

¹We note that paragraph 9 of the department's agreement with CPBG states only that CPBG data is to be used in conformance with the FDDP Act, if applicable. We do not dispute the department's ability to agree to comply with federal law. However, we find here that you have not demonstrated that this particular law applies in this case.

consumer; or (iii) [a regulated financial institution] otherwise obtain[s] about a consumer in connection with providing a financial product or service to that consumer.” 16 C.F.R. § 313(o)(1).

Additional protection is provided to consumers by limitations placed on the reuse of PIFI obtained from a financial institution by a nonaffiliated third party. Section 6802(c) provides as follows:

... a nonaffiliated third party that receives from a financial institution [NPI] under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

15 U.S.C. § 6802(c). You state that the submitted information was obtained through CPBG’s online database service. However, you do not inform this office, nor does the information on its face reflect, that the information at issue is NPI or PIFI as defined by the federal regulations.² *See Individual Reference Services Group, Inc. v. Federal Trade Commission*, 145 F. Supp.2d 6, 17 (D.D.C. 2001) (“It is the context in which information is disclosed—rather than the intrinsic nature of the information itself—that determines whether information falls within the GLB Act.”) Thus, we conclude that the GLB Act is not applicable to this information.

The submitted information contains a Texas driver’s license number, which is excepted from disclosure under section 552.130 of the Government 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 Texas driver’s license number under section 552.130.

²We note that paragraph 10 of the department’s agreement with CPBG states only that CPBG data is to be used in conformance with the GLB Act, if applicable. We do not dispute the department’s ability to agree to comply with federal law. However, we find here that you have not demonstrated that this particular law applies in this case.

A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we note that some of the materials at issue may be protected by copyright. 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 sum, the department must withhold the Texas driver's license number under section 552.130. Social security numbers may be confidential under federal law. The remaining submitted information must be released to the requestor in conformance 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 176071

Enc. Submitted documents

c: Ms. Judy Wells
811 Lakewood
Alvarado, Texas 76009
(w/o enclosures)