



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 25, 2003

Ms. Doreen L. Wheeler
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

OR2003-2027

Dear Ms. Wheeler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178321.

The Office of Consumer Credit Commissioner (the "commissioner") received a request for all 1) licenses issued by the commissioner, 2) applications the commissioner has received from three named entities, 3) complaints relating to these entities, 4) investigations conducted regarding these entities, and 5) information sent from the commissioner to these three entities. You state that you have released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the representative samples of submitted information.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. The doctrine of 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 the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that some personal financial information is highly

¹We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common law privacy protects assets and income source information).

Under *Industrial Foundation*, when an individual's personal financial choices are involved, this office ordinarily seeks to protect the privacy of the individual by withholding information relating to the individual's personal financial choices. However, in this case, as you have previously released this information to the requestor, withholding information relating to the individual's personal financial choices would not preserve the common-law privacy right of the individual, as you acknowledge. Accordingly, to protect the privacy of the individual to whom the information relates, we agree that you must withhold under section 552.101 all of the information within the submitted documents that identifies the individual at issue, most of which you have highlighted. We have also marked additional information that is identifying and must be withheld under section 552.101 in conjunction with common-law privacy. Based on our conclusion, we need not address your remaining claims for this information.

You next argue that a social security number contained in the submitted information is confidential under section 552.101. Section 552.101 encompasses information protected by other statutes, such as section 56.001 of the Occupations Code, which 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.

Occ. Code § 56.001.² You state that the social security number at issue here belongs to an applicant for or holder of a license issued by the commissioner, a licensing agency, and that the number was provided to the commissioner for licensing purposes in connection with the specified occupation licensed. Accordingly, we find that you must withhold the social security number at issue under section 56.001 of the Occupations Code, as encompassed by section 552.101.

²The language of section 56.001 of the Occupations Code corresponds in substance to the language of the former note to section 51.251 of the Occupations Code. House Bill No. 2812, which enacted section 56.001, also repealed the note to section 51.251. See Act of May 22, 2001, 77th Leg., R.S., § 14.001(b), 2001 Tex. Sess. Law Serv. 3970, 4098 (Vernon's) (repealing section 1, chapter 314, Acts of the 76th Legislature, Regular Session, 1999).

You next argue that the submitted materials include fingerprint information subject to sections 559.001, 559.002, and 559.003 of the Government Code, which provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information. Therefore, the commissioner must withhold the fingerprint in the submitted documents, which we have marked, under section 552.101 in conjunction with section 559.003 of the Government Code.

You next assert that the remaining information includes Texas driver's license numbers and motor vehicle information excepted from disclosure under section 552.130. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Accordingly, you must withhold the highlighted Texas driver's license numbers and motor vehicle information pursuant to section 552.130. We have also marked additional information the commissioner must withhold under this exception.

In summary, you must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The social security number of a holder of a license issued by the commissioner is excepted from disclosure under section 552.101 in conjunction with section 56.001 of the Occupations Code. A fingerprint in the submitted documents must be withheld from disclosure under section 552.101 in conjunction with section 559.003 of the Government Code. Finally, Texas driver's license numbers and motor vehicle information, which we have marked, must be withheld under section 552.130. The remaining 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).

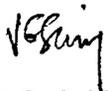
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 178321

Enc: Submitted documents

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(w/o enclosures)