



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2003

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

OR2003-6356

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# 187476.

The Texas Department of Transportation (the "department") received a request for Eurocarshop L.L.C.'s ("Eurocarshop"s) used car dealer application. You advise that you are withholding Texas driver's license numbers, dealer plate numbers, vehicle identification numbers, and social security numbers appearing on dealer application documents in reliance on the previous determinations issued by this office in Open Records Letter Nos. 2001-4775 (2001) and 2001-6050 (2001). *See* Open Records Decision No. 673 at 7-8 (2001) (criteria of previous determination for information in specific, clearly delineated categories). You state that you do not wish to withhold any other information, but ask whether portions of the remaining requested information are excepted under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. Finally, pursuant to section 552.305 of the Government Code, you have notified Eurocarshop of this request for information, of the fact that the request for information may implicate its proprietary interests, and of its right to submit arguments to this office explaining why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

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 public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, Eurocarshop has not submitted to this office any reasons explaining why its information should not be released. Therefore, Eurocarshop has provided us with no basis on which to conclude that it has a protected proprietary interest in any of the submitted 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); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

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 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has generally 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).

You question whether the department can release an ownership percentage contained in the submitted information without violating confidentiality rules. Although this office generally concludes that ownership percentages reflect personal financial information, we do not extend that principle to this situation. Where an individual holds a one hundred percent interest in a business, the information simply reflects that the individual owns his own business. We find this information is not highly intimate or embarrassing for purposes of common-law privacy and is therefore not confidential. Therefore, you must release this information. However, after reviewing the submitted documents, we find that some other information is confidential pursuant to the owner's common-law right to privacy. The department must withhold this information, which we have marked, pursuant to section 552.101 and common-law privacy. We find that none of the remaining information at issue is highly intimate or embarrassing for purposes of common-law privacy and is therefore not excepted from disclosure under section 552.101.

However, we note that a portion of the submitted information is subject to section 552.136. Section 552.136 makes certain account numbers confidential. It provides as follows:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD,
CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(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:

- (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. Therefore, the department must withhold the account number we have marked pursuant to section 552.136.

In summary, the department must withhold the dealer plate, driver's license, vehicle identification, and social security numbers for which it has been granted previous determinations. The department must withhold the marked personal financial information under section 552.101 in conjunction with common-law privacy. The department must also withhold the account number we have marked pursuant to section 552.136. The remainder of the submitted information must be provided to the requestor.

Finally, you ask for a previous determination allowing the department to withhold from disclosure without seeking an open records ruling ownership percentages, property leases, and telephone verifications. Whether these types of information falls within an exception to disclosure must be determined on a case-by-case basis. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 523 at 3-4 (1989), 385 (1983), 373 at 3-4(1983); *see also* Open Records Decision No. 620 at 4 (1993). For this reason, we decline to issue such a previous determination at this time. Therefore, 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 187476

Enc. Submitted documents

c: Mr. Hector G. Longoria
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(w/o enclosures)