



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2004

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

OR2004-3719

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# 200896.

Texas Department of Transportation (the "department") received a request for "(1) any and all applications or other documents submitted by or on behalf of A. Malik Muhammad and/or Kingz Auto Sales; and (2) any and all certificates and/or licenses issued to A. Malik Muhammad by [the department] and the current status of such certificates or licenses." You indicate that the department is releasing the requested information, with the exception of the commercial real estate lease (the "lease") that you have submitted for review. You state that the department does not seek to withhold the lease, but you indicate that the lease may be excepted from disclosure pursuant to section 552.101 of the Government Code.¹ We have considered your comments and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects

¹ While you do not raise section 552.101 as an exception to disclosure, you refer to past open records letter rulings in which this office determined that the department was required to withhold information from disclosure pursuant to section 552.101. Thus, while we acknowledge that the department does not seek to withhold the information, we understand you to represent that section 552.101 may be applicable.

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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931

Prior decisions of this office have determined that personal financial information not related to a transaction between an individual and a governmental body is generally not subject to a legitimate public interest and is therefore protected by common-law privacy. *See* Open Records Decision No. 600 (1992); *cf.* Open Records Decision Nos. 545 (1990), 523 (1989) (essential facts about financial transaction between individual and governmental body generally subject to legitimate public interest and not protected by common-law privacy). Whether financial information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

In this case, the lease at issue is a contract between "Darby's Properties" and "I.C.O.A. Inv., Inc. DBA Kingz Auto Sales." It is not clear from the submitted information whether the parties at issue are sole proprietorships or business entities other than sole proprietorships. Thus, we are unable to determine from the information provided whether the lease at issue consists of personal financial information of an individual that is protected by common-law privacy. We therefore make the following determination: if one of the parties to the lease at issue is a sole proprietorship, then the lease constitutes personal financial information of the sole proprietor and is therefore protected by common-law privacy and must be withheld under section 552.101. If, however, neither party to the lease at issue is a sole proprietorship, the lease does not constitute personal financial information and may not be withheld under section 552.101 in conjunction with common-law privacy. *See United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); Open Records Decision Nos. 620 (1993) (corporation has no common-law privacy interest in its financial information).

You request that this office issue a previous determination to the department regarding the type of lease information at issue in the present request. Because the determination of whether such information is protected by common-law privacy must be made on a case-by-case basis, we decline to issue a previous determination at this time. This letter ruling is therefore limited to the particular records at issue in this request and the facts as presented to us, and 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 200896

Enc: Submitted documents

c: Mr. Jeffrey L. Cureton
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