



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2006

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR2006-04246

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 247340.

The Texas Department of Transportation (the "department") received a request for all information regarding any of the "Southpoint" automobile dealerships in Travis County for the last two years, as well as "any complaints, investigations or lawsuits" regarding any of the "Southpoint" automobile dealerships in the last ten years. You indicate that the department will redact social security numbers and Texas motor vehicle record information from the responsive information pursuant to section 552.147(b) of the Government Code and the previous determinations issued by this office in Open Records Letter Nos. 2001-4775 (2001). *See* Gov't Code § 552.147(b) (authorizing a governmental body to redact a living person's social security number from public release without the necessity of requesting decision from the Attorney General's office under the Act); Open Records Decision No. 673 at 7-8 (2001) (establishing criteria for previous determinations). You also state that most of the requested information will be released to the requestor, but claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.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." Gov't

¹We assume that the sample of records submitted to this office is 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.

Code § 552.101. This section encompasses the doctrine of common law privacy. Information must be withheld from disclosure under common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Certain types of personal financial information are protected by common law privacy. Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from disclosure by common law privacy to be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body). The determination of whether the public's interest in obtaining particular financial information is sufficient to justify its disclosure must be made on a case-by-case basis. Open Records Decision No. 373 at 4 (1983).

The submitted representative sample of information consists of the department's Form 1806 regarding ownership and management information for the dealerships at issue in the request. We have marked the personal financial information regarding ownerships percentages in the submitted Forms 1806 that must be withheld under section 552.101 in conjunction with common law privacy. The remaining submitted information must be released.

Finally, you request that this office issue a previous determination that would permit the department to withhold from disclosure some types of personal financial information relating to ownerships percentages on Form 1806 under section 552.101 without the need of requesting a ruling from this office about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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*, 342 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 Schless at the Office of the Attorney General 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. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 247340

Enc. Submitted documents

c: Mr. Ahmad Keshavarz
106 East 6th Street, #700
Austin, Texas 78701
(w/o enclosures)