



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2006

Mr. Larry Lippencott
Tax Assessor-Collector
Parker County
1112 Santa Fe Drive
Weatherford, Texas 78086

OR2006-08822

Dear Mr. Lippencott:

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# 255906.

The Tax Assessor-Collector of Parker County (the "tax assessor") received a request for all documents related to a specified employee warning and copies of all employee evaluation forms pertaining to a former employee. You state that you have released the requested information redacting the name of the customer.¹ You claim that the information you have redacted is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the tax assessor's procedural obligations under the Act. Under section 552.301(e) of the Government Code, a governmental body is required to submit to this office arguments explaining why the claimed exceptions apply that would allow the information to be withheld. *See* Gov't Code § 552.301(e). Although you have raised exceptions to disclosure, you have not submitted any arguments stating the reasons why these exceptions are applicable to the information you seek to withhold. Accordingly, we conclude that you have failed to comply with section 552.301.

¹Although you state that you have also redacted the customer's address, we note that the submitted documents do not contain the customer's address.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). In this instance, you raise sections 552.101, 552.117, and 552.130 of the Government Code. As these sections can provide compelling reasons to withhold information, we will address the applicability of these exceptions to the submitted information.

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 Code § 552.101. You claim that the complaint contains information that is confidential under section 2721(a) of title 18 of the United States Code. Section 2721(a) provides

"A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

18 U.S.C. § 2721(a)(1). Section 2725 defines motor vehicle record as "any record that pertains to a motor vehicle operator's permit, . . . title, . . . registration, or identification card issued by a department of motor vehicles. *See id.* § 2725(1). First, we note that this provision is only applicable to state departments of motor vehicles. *See id.* § 2721(a). You have not explained how the tax assessor's office is a state department of motor vehicles for which this exception is applicable. Furthermore, this provision is only applicable to personal information contained in a motor vehicle record as defined by section 2725(3). *See id.* The document you have submitted for our review is a hand-written complaint from a customer; therefore, this complaint is not a motor vehicle record for purposes of this statute. Accordingly, you have failed to demonstrate the applicability of this provision to the information at issue.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual

assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id* at 683. You assert that the customer's name should be excepted from disclosure under common law privacy. However, you have not explained, nor can we discern, how the customer's name is highly intimate or embarrassing information. Therefore, you have not demonstrated that the customer's name is confidential under common law privacy.

You also claim that the customer's name is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *See* Gov't Code 552.117(a)(1). Section 552.117 protects certain information belonging to officials or employees of governmental bodies. You do not state that the customer is an official or employee of the tax assessor. Moreover, you have not explained how the customer's name is the type of information protected by section 552.117. Accordingly, the tax assessor may not withhold the customer's name under section 552.117.

Lastly, you claim that the customer's name is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Generally, the type of information considered to be Texas motor vehicle information for purposes of section 552.130 includes, among other information, driver's license numbers and expiration dates, vehicle identification numbers, and license plate numbers and expiration dates. You have not explained how the customer's name constitutes Texas motor vehicle record information as contemplated by section 552.130. Therefore, the customer's name may not be withheld under section 552.130. As you raise no other exceptions against disclosure, the submitted complaint must be released in its entirety 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, 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*, 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 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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 255906

Enc. Submitted documents

c: Ms. Carla Faye Jones
321 Riverview Road
Millsap, Texas 76066
(w/o enclosures)