



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2009-01399

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# 333873.

The Texas Department of Transportation (the "department") received a request for sales and service agreements from specific manufacturers and distributors as well as a specified company's franchise agreement. You state that you have released some of the requested information. You indicate that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also claim that the submitted information may contain proprietary or private information subject to exception under the Act. Accordingly, you have notified Ford Motor Company ("Ford") and Mazda Motor of America, Inc. ("Mazda") of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ We have considered the exception you claim and reviewed the submitted information.

Initially we note, and you acknowledge, that the department has failed to comply with the procedural requirements of section 552.301 of the Government Code with respect to a portion of the information at issue. Although you submitted some of the responsive records by the fifteen-business-day deadline, a portion of the responsive information was not submitted until December 16, 2008. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. See Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because third party interests are at stake in this instance, we will consider if any of the untimely submitted information must be withheld to protect the third party's interest. Your claim under section 552.101 can also provide a compelling reason for non-disclosure. Therefore, we will consider the applicability of this exception to the information that was not timely submitted and to the remaining submitted information.

Next, we note that 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 letter, we have not received comments from Ford or Mazda explaining why the submitted information should not be released. Therefore, we have no basis to conclude that these third parties have protected proprietary interests in the submitted information. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold any portion of the submitted information based upon the proprietary interests of Ford or Mazda.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (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 common-law right to privacy encompasses some types of personal financial information. This office has determined that financial information that relates 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. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally 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), 373 at 4 (1983) (determination of whether public's

interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

In this instance, some of the submitted information relates to a corporate entity. We note that common-law privacy protects the interests of individuals, not those of corporations and other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also* *U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Thus, the department may not withhold any of the submitted information that relates to the corporate entity under section 552.101 and common-law privacy. Furthermore, although this office generally classifies percentages of ownership of a business as personal financial information, we do not so hold where an individual owns a one hundred percent interest in a business. Such information simply reflects that an individual owns his own business. Thus, the submitted information that reflects one hundred percent ownership is not protected by common-law privacy and may not be withheld on that basis under section 552.101. Therefore, we determine that no portion of the submitted information is protected by common-law privacy and none may be withheld on that basis. As no further exceptions against disclosure of the submitted information have been raised, it must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 333873

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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