



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 19, 2010

Ms. Laurie B. Hobbs  
Assistant General Counsel  
Office of Consumer Credit Commissioner  
2601 North Lamar Boulevard  
Austin, Texas 78705

OR2010-02524

Dear Ms. Hobbs:

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# 371300 (OR-10-057).

The Office of Consumer Credit Commissioner (the "commissioner") received a request for information pertaining to Merchants & Professional Credit Bureau, Inc.<sup>1</sup> You state you have released some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed 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

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<sup>1</sup>We note that the commissioner sought clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

<sup>2</sup>Although you also seek to withhold some of the submitted information under section 552.305 of the Government Code, we note that section 552.305 is not an exception to disclosure. *See* Gov't Code § 552.305. Section 552.305 addresses the procedural requirements for notifying third parties that their interests may be affected by a request for information. *See id.*

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 types 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. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure. See Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we agree that most of the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, with the exception of the information we have marked for release, the commissioner must withhold the information you have marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate how the remaining information you have marked is highly intimate or embarrassing or not of legitimate public concern. Accordingly, the information we have marked for release is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that basis.

You contend some of the remaining information is excepted from public disclosure under constitutional privacy, which is also encompassed by section 552.101 of the Government Code. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the commissioner has not demonstrated how any of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the commissioner may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

In summary, with the exception of the information we have marked for release, the commissioner must withhold the information you have marked under section 552.101 in conjunction with common-law privacy. The remaining information must be released to the requestor.

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](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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 371300

Enc. Submitted documents

c: Requestor  
(w/o enclosures)