



August 30, 2001

Ms. Marcelle Sattiewhite Jones
General Counsel
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75093

OR2001-3843

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151320.

The North Texas Tollway Authority (the "tollway authority") received a request for the following categories of information concerning toll violators on the North Dallas Tollway:

- (1) A side by side comparison for May 2000 and May 2001 of the Fast Toll Tag Only lane violators on the North Dallas Tollway.
- (2) A side by side comparison for December 2000 and April 2001 of the Fast Toll Tag Only lane violators on the North Dallas Tollway.
- (3) List of plate numbers of the top ten current toll violators.
- (4) List of names of the last [ten] people who have had court cases brought against them for running the Tollway toll tag lanes.

You explain that the requestor has clarified the request regarding violations at certain lanes of the Dallas North Tollway. You state the tollway authority has provided the requestor with information responsive to item 4 above, the tollway authority will provide the audited information responsive to items 1 and 2, and that upon acceptance of applicable fees for manipulation of electronically held data, the tollway authority will provide the requestor with information responsive to item 3.¹ See Gov't Code § 552.231 (responding to request for

¹We note that Texas license plate numbers are protected from public disclosure under section 552.130 of the Government Code, which excepts information relating to a motor vehicle title or registration issued by an agency of this state.

information that requires programming or manipulation of data). However, you claim that the remainder of the requested information, mainly unaudited information responsive to items 1 and 2, is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office written comments stating the reasons why each exception that you raised would allow the information to be withheld nor have you provided a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the document. *See Gov't Code § 552.301(e)(1)(A), (D).*

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

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

²You claim the information is excepted from disclosure because it does not fall within the purview of section 552.022 of the Government Code. Section 552.022 does not serve as an exhaustive list of public information or as an exception to the release of information. Rather, it lists eighteen categories of public information that generally may be withheld only if confidential by law, or, in the case of a completed report, investigation, evaluation, or audit, is excepted under section 552.108 of the Government Code. *See Gov't Code § 552.022* (section 552.022(a) expressly states that it does not limit "the amount or kind of information that is public information under this chapter").

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).

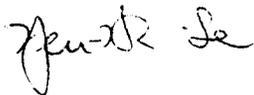
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department of Public 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 General Services 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. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref.: ID# 151320

cc: Mr. Bennett Cunningham
Investigative Reporter
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10111 North Central Expressway
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