



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2003-6082

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186754.

The Texas Department of Public Safety ("DPS") received a request for all documents and information relating to two specified complaints. You state that you will release the majority of the information responsive to this request. However, you claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 Code § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561 we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that the federal Freedom of Information Act ("FOIA") applies only to federal agencies and does not apply to records held by state agencies. Open Records Decision No. 561 at 6. Further, we stated that information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However,

we also determined that when information obtained by Texas governmental bodies from federal agencies is confidential under federal law while in the possession of the federal agencies, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. “In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law.” *Id.* at 7.

In this instance, the submitted information was provided by the Federal Motor Carrier Safety Administration (“FMCSA”). You indicate that the FMCSA has represented that the portions of the information revealing drivers’ names are confidential under FOIA and would not be released by FMCSA. *See* 5 U.S.C. § 552(b)(6). Therefore, we conclude that the highlighted portions of the submitted information must be withheld under section 552.101.

Further, you argue that the submitted information contains information that is confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver’s license numbers and license plate numbers, which you have redacted, under section 552.130.

In summary, you must withhold the highlighted portions of the submitted information under section 552.101. You must withhold the Texas driver’s license numbers and license plate numbers, which you have redacted, under section 552.130. You must release the remaining information 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, 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 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 186754

Enc: Submitted documents

c: Ms. Jeralynn Jackee Cox
Tunnell & Cox, L.L.P.
P.O. Box 414
Lufkin, Texas 75902
(w/o enclosures)