



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2006

Mr. William Mahomes  
Interim Director of Legal Services  
NTTA  
P. O. Box 260729  
Plano, Texas 75026

OR2006-10706

Dear Mr. Mahomes:

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# 259282.

The North Texas Tollway Authority ("NTTA") received a request for (1) NTTA's written criteria for "so-called 'dummy' or complimentary toll tags," (2) "a complete list of [all] people, including, but not limited to government officials, NTTA retirees, private individuals or businesses that were supplied such tags," (3) if the issuance of the tags requires a vote by the NTTA board of directors, written records of the applicable votes and for how long the tags at issue are valid, and (4) an estimate of the cost of non-revenue tags per year. You state NTTA does not have information responsive to item 3 of the request.<sup>1</sup> You indicate NTTA will make some of the responsive information available to the requestor. You claim that the information responsive to item 2 of the request is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor's attorney. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. NTTA is governed by the Texas Regional Tollway Authority Act, chapter 366 of the Transportation Code. Section 366.179 of the Transportation Code provides:

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<sup>1</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(a) For purposes of this section, a transponder is a device placed on or within an automobile that is capable of transmitting or receiving information used to assess or collect tolls. A transponder is insufficiently funded if there is not money in the account for which the transponder was issued.

(b) Any law enforcement or peace officer of an entity with which [a regional tollway] authority has contracted under Section 366.182(c) may seize a stolen or insufficiently funded transponder and return it to the authority that issued the transponder. A transponder may not be seized before the 30th day after the date that an authority has sent a notice of delinquency to the holder of the account.

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficient of operations:

(1) the [regional tollway] authority;

(2) an entity to which a project authorized by this chapter is transferred; or

(3) a third party service provider under contract with an entity described by Subdivision (1) or (2).

(d) Transponder customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

Transp. Code § 366.179; *see id.* § 366.003(1) (“‘Authority’ means a regional tollway authority[.]”). You indicate the toll tags at issue in the request are transponders under section 366.179. *See id.* § 366.179(a).

The submitted information identifies persons who have non-revenue transponder accounts with NTTA. You contend that the submitted information is confidential under section 366.179(d), arguing that “all users of NTTA facilities are ‘customers,’ regardless of the subtle distinction in their revenue status.” *See id.* § 366.003(9) (“‘Revenue’ means the tolls, rents, and other money received by an authority from the ownership or operation of a turnpike project.”). Nevertheless, you acknowledge that the non-revenue transponder accounts at issue do not generate tolls.

The term “customer” is not defined in the Regional Tollway Authority Act. We note that “customer” is generally defined as “a buyer, purchaser, consumer, or patron” or “one who

regularly or repeatedly makes purchases of, or has business dealings with, a tradesman or business.” BLACK’S LAW DICTIONARY 386 (6th ed. 1990); *see Henderson v. Central Power & Light Co.*, 977 S.W.2d 439, 447 (Tex.App.–Corpus Christi 1998, pet. denied) (quoting same definition from BLACK’S 348 (5th ed. 1979)); WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 559 (2002) (defining “customer” as “one that purchases some commodity or service”). Section 366.179(d) provides confidentiality only for “transponder customer account information.” Transp. Code § 366.179(d). The transponder accounts at issue in the request are complimentary and are not used to assess or collect tolls. *See id.* § 366.179(a). Accordingly, we conclude the persons who hold these transponder accounts are not customers for purposes of section 366.179(d). *See id.* § 1.002 (providing for applicability of the chapter 311, Government Code, the Texas Code Construction Act, to the Transportation Code); Gov’t Code § 311.011 (“Word and phrases shall be read in context and construed according to the rules of grammar and common usage.”); *Ex Parte Torres*, 943 S.W. 2d 469 (Tex. Crim. App. 1997) (stating that if language of statute is not ambiguous, court must give effect to plain meaning of its words unless doing so would lead to absurd results). Consequently, the submitted information may not be withheld under section 552.101 of the Government Code. As you do not raise any other exceptions to disclosure, the identities of persons who have non-revenue transponder accounts with NTTA must be released. As the remaining submitted information is not responsive to the instant request, NTTA need not release this 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, 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/eb

Ref: ID# 259282

Enc. Submitted documents

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