



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 24, 2008

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

OR2008-03818

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# 305263.

The Texas Department of Transportation (the "department") received a request for "the vehicle information, to include license plate number and vehicle description, of all Department of Public Safety vehicles that are currently utilizing the non-revenue toll account for Toll Road 130 in Williamson and Travis counties." You state that you are withholding the license plate numbers pursuant to section 552.130 of the Government Code in accordance with the previous determination issued by this office in Open Records Letter No. 2004-5432 (2004). You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that a portion of the remaining information, which we have marked, is non-responsive because it pertains to a toll that was paid. This decision does not address the

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

public availability of the non-responsive information and that information need not be released.. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 228.057 of the Transportation Code provides as follows:

(a) For purposes of this section, a “transponder” means a device, placed on or within an automobile, that is capable of transmitting information used to assess or to collect tolls. A transponder is “insufficiently funded” when there are no remaining funds in the account in connection with which the transponder was issued.

(b) Any peace officer of this state may seize a stolen or insufficiently funded transponder and return it to the department, except that an insufficiently funded transponder may not be seized sooner than the 30th day after the date the department has sent a notice of delinquency to the holder of the account.

(c) The department may enter into an agreement with one or more persons to market and sell transponders for use on department toll roads.

(d) The department may charge reasonable fees for administering electronic toll collection customer accounts.

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

(f) A contract for the acquisition, construction, maintenance, or operation of a toll project must ensure the confidentiality of all electronic toll collection customer account information under Subsection (e).

Transp. Code § 228.057. The term “customer” is not defined in the Transportation Code. 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 228.057(e) provides confidentiality only for “[e]lectronic

toll collection customer account information, including contact and payment information and trip data[.]” Transp. Code § 228.057(e). The toll account at issue in the request is complimentary and is not used to assess or collect tolls. *See id.* § 228.057(a). Accordingly, we conclude the persons who use this toll account are not customers for purposes of section 228.057(e). *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). In enacting a statute, it is presumed that the entire statute is intended to be effective. Gov’t Code § 311.021(2). Consequently, the information at issue may not be withheld under section 552.101 of the Government Code in conjunction with section 228.057(e) of the Transportation Code. As you make no other arguments against disclosure, the information at issue must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in black ink, consisting of a stylized letter 'B' enclosed within a circle, with a long horizontal flourish extending to the right.

Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/jb

Ref: ID# 305263  
Enc. Submitted documents

c: Mr. Bill Assiter  
P.O. Box 15444  
Austin, Texas 78761  
(w/o enclosures)