



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2014

Mr. Robert Schell
Assistant Director of General Counsel
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026

OR2014-03481

Dear Mr. Schell:

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# 515999 (NTTA File Nos. 2013-02536 and 2013-02568).

The North Texas Tollway Authority (the "authority") received two requests from different requestors for information pertaining to uncashed and undeliverable checks issued more than six months prior to the date of the requests in excess of certain amounts. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the authority's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code § 552.301(b)*. The authority received the first request for information on December 2, 2013. Accordingly, you were required to provide the

¹Although you also raise section 552.117 of the Government Code as an exception to disclosure of the submitted information, you have not provided any arguments in support of this exception. Accordingly, we assume you no longer assert section 552.117. *See Gov't Code §§ 552.301, .302.*

information required by section 552.301(b) by December 16, 2013. However, the envelope in which the authority provided the information required by section 552.301(b) was postmarked December 18, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the authority failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of section 552.101 to 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. Section 552.101 encompasses information other statutes make confidential. The authority is governed by the Texas Regional Tollway Authority Act, chapter 366 of the Transportation Code. Section 366.179 of the Transportation Code provides in relevant part:

(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 no money in the account for which the transponder was issued.

...

(d) Transponder customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under [the Act].

Transp. Code § 366.179(a), (d). You state that, in connection with the operation of its toll projects, "the [authority] issues transponders or 'TollTags' to [authority] customers wishing to establish an account with the [a]uthority." You state the requested information consists of TollTag customers' account information compiled by the authority. We therefore conclude the information at issue is subject to section 366.179(d) of the Transportation Code and must be withheld under section 552.101 of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a large, stylized flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 515999

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)