



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2014

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

OR2014-03729

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# 515705.

The Texas Department of Transportation (the "department") received a request for nine categories of information pertaining to toll violations and collections, including information related to the number of collections cases, the value of collections, and contracts and invoices related to debt collection services. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Although you take no position with respect to the public availability of Exhibit C, you state release of this information may implicate the property or privacy rights of NCO Financial Systems, Incorporated. Accordingly, you state and provide documentation showing, you have notified this third party of the request for information and of its rights to submit arguments to this office as to why Exhibit C should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *See also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have

considered the exception you claim and reviewed the submitted representative sample of information.¹

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the third party explaining why Exhibit C should not be released. Therefore, we have no basis to conclude the third party has a protected proprietary interest in Exhibit C. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold Exhibit C on the basis of any proprietary interest the third party may have in the information. As no exceptions to disclosure have been raised, the department must release Exhibit C.

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 exception encompasses information that other statutes make confidential, such as section 228.057 of the Transportation Code, which provides in part:

(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.

Transp. Code § 228.057(e). The term "customer" is not defined in the Transportation Code. We note "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 LAW DICTIONARY 348 (5th ed. 1979)); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 559 (2002) (defining "customer" as "one that purchases some commodity or service").

You state Exhibit B consists of electronic toll collection customer account information and trip data. You state the information at issue pertains to actual customers that have business dealings with a toll facility and have regularly or repeatedly made purchases from the toll

¹We assume 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.

facility. Based on your representations and our review, we find Exhibit B falls within the scope of section 228.057(e). *See* Transp. Code § 228.057(e) (for purposes of Transp. Code § 228.057, “account information” includes contact and payment information and trip data). Thus, we conclude the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 228.057(e) of the Transportation Code.

In summary, the department must release Exhibit C. The department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 228.057(e) of the Transportation 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 515705

Enc. Submitted documents

c: Requestor
(w/o enclosures)

NCO Financial Systems, Inc.
2920 Prospect Park Drive, Suite 200
Rancho Cordova, California 95670
(w/o enclosures)