



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2015

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

OR2015-08603

Dear Ms. Parker:

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# 562657.

The Texas Department of Transportation (the "department") received a request for all complaints filed with the department concerning TxTag billing issues during a specified time period.¹ The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception the

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The requestor claims the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(d). Regardless of whether the department complied with the requirements of section 552.301(d) of the Government Code, because the exception the department claims can provide a compelling reason to overcome the presumption of openness, we will consider the department's claimed exception for the submitted information. *See id.* §§ 552.007, .302, .352.

department claims and reviewed the submitted representative sample of information.³ We have also received and considered comments from an attorney for the requestor. *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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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").

The department states the submitted information consists of electronic toll collection customer account information. The department states the information at issue pertains to actual customers who have made purchases in the TxTag or pay by mail toll program. Based on the department's representations and our review, we find the submitted information 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 the submitted information 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.

³We 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 those records contain substantially different types of information than that submitted to this office.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 562657

Enc. Submitted documents

c: Requestor
(w/o enclosures)