



November 20, 2015

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

OR2015-24435

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# 587981.

The Texas Department of Transportation (the "department") received a request for information related to outstanding and resolved toll violations during a specified time period, including first and last name, city and state, amounts owed and paid, and status. You claim the submitted 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>

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. This exception encompasses information made confidential by other statutes, 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 [the Act].

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<sup>1</sup>We 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.

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 the submitted information consists of electronic toll collection customer account information and trip data. You state the information at issue pertains to actual toll customers who have made purchases from the pay-by-mail toll program. Based on your 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, the submitted information is generally confidential under section 228.057(e) of the Transportation Code.

However, we note section 372.102 of the Transportation Code provides, in relevant part, the following:

(a) Notwithstanding the confidentiality of electronic toll collection customer account information, including confidentiality under [section] 228.057(e), . . . a toll project entity may publish a list of the names of the registered owners or lessees of nonpaying vehicles who at the time of publication are liable for the payment of past due and unpaid tolls or administrative fees. The list may include only the persons’ names and, for each person listed:

- (1) the city and state of the person’s residence;
- (2) the total number of events of nonpayment; and
- (3) the total amount due for the tolls and administrative fees.

Transp. Code § 372.102(a); *see also id.* §§ 201.001(b) (defining “toll project”), 372.001(2) (“Toll project entity” means an entity authorized by law to acquire, design, construct, finance, operate, and maintain a toll project, and includes the department), .001(1) (“Toll project” means a toll project described by Transp. Code § 201.001(b)). Thus, the department has the discretion to publish a list of registered owners or lessees of nonpaying vehicles, including the person’s name, city and state of registration, total number of events of nonpayment, and the total amount due.

We note the department has published a list of registered owners or lessees of nonpaying vehicles that includes each owner’s name, city and state of registration, total number of

events of nonpayment, and the total amount due (the “published list”).<sup>2</sup> We further note the published list contains information that is identical to portions of the information the department now seeks to withhold under section 228.057(e) of the Transportation Code. Because the department has exercised its discretion under section 372.102(a) to publish this information on its website, the information contained in the published list is not confidential under section 228.057(e) of the Transportation Code. Therefore, to the extent the submitted information is publicly available on the department’s website, the department may not withhold such information under section 552.101 of the Government Code in conjunction with section 228.057(e) of the Transportation Code. However, the submitted information that is not publicly available in the published list, including the amount paid and status, which are not permitted to be included in a list published under section 372.102(a), is confidential pursuant to section 228.057(e) of the Transportation Code and the department must withhold such information under section 552.101 of the Government Code.

In summary, the department must release the portions of the submitted information that are publicly available in the published list under section 372.102(a) of the Transportation Code and must withhold the remaining requested 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.

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

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<sup>2</sup>The department’s Top Toll Violators List may be found on the department’s website at <http://www.txdot.gov/inside-txdot/media-center/statewide-news/2013-archive/051-2013-violators.html>.

Ref: ID# 587981

Enc. Submitted documents

c: Requestor  
(w/o enclosures)