



October 12, 2001

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

OR2001-4624

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153201.

The Texas Department of Transportation (the "department") received a written request for all information pertaining to a "travel survey to collect traffic information." You state that most of the requested information has been released to the requestor. You contend, however, that certain other information, a representative sample of which you submitted to this office, is excepted from disclosure under sections 552.130 and 552.137 of the Government Code.<sup>1</sup> Specifically, you contend that the names and addresses of certain motorists are made confidential under section 552.130 in conjunction with chapter 730 of the Transportation Code, and that the e-mail addresses contained in the documents you submitted as Exhibit B are made confidential under section 552.137 of the Government Code.<sup>2</sup>

You first contend that the information you submitted to this office as Exhibit C is excepted from public disclosure pursuant to section 552.130 of the Government Code in conjunction with chapter 730 of the Transportation Code. In this regard, we note that section 552.130 of

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<sup>1</sup>In reaching our conclusion here, 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 No. 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.

<sup>2</sup>We note that you have also marked the e-mail addresses in the documents you submitted as Exhibit D as being excepted from disclosure. Because Exhibit D does not come within the ambit of the records request, we do not address the applicability of section 552.137 to the documents contained in Exhibit D.

the Government Code governs the release and use of information obtained from motor vehicle records. Section 552.130 provides as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) *Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code. [Emphasis added.]*

Section 730.004 of the Transportation Code prohibits an "agency" that compiles or maintains motor vehicle records from disclosing "personal information" about any person that the agency obtained in connection with a motor vehicle record except as provided in sections 730.005-.008. *See* Transp. Code § 730.003(1) (defining "agency"). In this instance, we believe that the department is an "agency," as defined by section 730.003(1) of the Transportation Code and that the disclosure provisions found in chapter 730 apply to the department.

The stated purpose of chapter 730 of the Transportation Code is "to protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of *personal information* contained in motor vehicle records, except as authorized by the individual or by law." Transp. Code § 730.002. (Emphasis added.) Section 730.003(6) of the Transportation Code defines "personal information" as "information that identifies a person, including an individual's . . . name [and] address, but not the zip code . . ." You state that the names and addresses contained in Exhibit C "were taken directly from [the department's] registration records." Based on this representation, we conclude that the department must withhold all "personal information" contained in Exhibit C pursuant to section 552.130(b) of the Government Code in conjunction with chapter 730 of the Transportation Code. The remaining information contained in Exhibit C must be released to the requestor.

You next seek to withhold all e-mail addresses contained in the documents you submitted to our office as Exhibit B. The Seventy-seventh Legislature recently added section 552.137 to chapter 552 of the Government Code. This new exception makes certain e-mail addresses

confidential.<sup>3</sup> Senate Bill 694, as passed May 14, 2001, signed by the Governor May 26, 2001, and made effective immediately, provides in relevant part:

- (a) An e-mail address *of a member of the public* that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release. [Emphasis added.]

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.137). It does not appear to this office that any of the communicants has authorized the release of their e-mail address. Accordingly, section 552.137 of the Government Code requires the department to withhold the e-mail addresses of the members of the public contained in the records at issue, unless the communicant has affirmatively consented to its release. We note, however, that some of the e-mail addresses belong to state agencies and state officials. We do not believe that section 552.137 was intended to protect such e-mail addresses, and we have marked the documents in Exhibit B accordingly.

To summarize, based on your representation that the names and addresses contained in Exhibit C were directly derived from the department's motor vehicle registration records, we conclude that the department must withhold the motorists' names and street addresses pursuant to section 552.130(b) of the Government Code in conjunction with chapter 730 of the Transportation Code; however, the department must release all of the zip code information contained in these records. The department must also withhold the e-mail addresses of members of the public pursuant to section 552.137 of the Government Code, but the e-mail addresses of state agencies and state officials 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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

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<sup>3</sup>House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 General Services Commission 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/RWP/seg

Ref: ID# 153201

Enc. Submitted documents

c: Mr. Scott Houston  
Texas Municipal League  
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Austin, Texas 78754-5128  
(w/o enclosures)