



July 12, 2002

Ms. Marcelle Sattiewhite Jones  
General Counsel  
North Texas Tollway Authority  
P.O. Box 360729  
Plano, Texas 75026

OR2002-3793

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165903.

The North Texas Tollway Authority (the "authority") received a request for copies of a listing of vehicles by tolltag that passed through the Parker station during a specified period of time on a certain date and particular motor vehicle registration information. You claim that the submitted information, or portions thereof, is excepted from disclosure pursuant to sections 552.110, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that the authority failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides that a governmental body that requests an attorney general decision concerning a request for information must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld from disclosure. *See* Gov't Code § 552.301(e)(1)(A). We note that the authority failed to provide us with these written comments within fifteen business days of receiving the request for information.

When a governmental body fails to comply with the procedural requirements of section 552.301 of the Government Code, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must demonstrate a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is a demonstration that some other source of law makes the requested information confidential or that third party

interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since the authority claims that the information at issue is excepted from disclosure under sections 552.110, 552.130, and 552.136 of the Government Code, we address the authority's claims.

You claim that the information at issue is excepted from disclosure pursuant to section 552.110 of the Government Code. Section 552.110(a) protects trade secrets of private parties. The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no one submits an argument that rebuts the claim as a matter of law.<sup>1</sup> *See* Open Records Decision No. 552 at 5 (1990).

Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." An entity will not meet its burden under section 552.110(b) by a mere conclusory assertion of a possibility of commercial harm. *Cf. National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The governmental body or interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing that substantial

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<sup>1</sup> The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and other involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." RESTATEMENT OF TORTS, § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

competitive injury would likely result from disclosure of the requested information. *See* Open Records Decision No. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure).

We note that as a general rule, section 552.110 protects the proprietary interests of private parties who submit information to governmental bodies. *See* Open Records Decision No. 319 at 2 (1982) (construing statutory predecessor).<sup>2</sup> You inform this office that the authority uses a method of collecting tolls that requires access to personal information of customers that pass through its tollways. You claim that the compilation of information that you submitted to us for review constitutes a trade secret of the authority and/or commercial or financial information, the disclosure of which would cause substantial competitive harm to the authority. This office has previously determined that information obtained from third persons by a governmental body and compiled by the governmental body for its own purposes does not qualify as information that is protected under section 552.110. *See* Open Records Decision Nos. 590 at 4 (1991) (concluding that statutory predecessor to section 552.110 did not except from disclosure information generated and maintained by West Texas State University in connection with transactions with private donors), 568 at 3 (1990) (concluding that information relating to names and account balances of members of Cigarette Tax Recovery Trust Fund held by State Treasurer was not commercial or financial information "obtained from a person" for purposes of statutory predecessor to section 552.110). Accordingly, we conclude that the authority may not withhold any portion of the information at issue from disclosure pursuant to section 552.110 of the Government Code.

However, you also claim that portions of the information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the authority must withhold the Texas license plate numbers and Texas driver's license number that we have marked from disclosure pursuant to section 552.130 of the Government Code.

You also claim that portions of the information are excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

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<sup>2</sup> We note that Open Records Decision No. 593 (1991) and the other rulings on which you rely apply section 552.104 of the Government Code. This exception protects a governmental body's competitive interests in certain situations. *See* Open Records Decision No. 593 at 4 (1991) (stating that where competition with private enterprise is authorized by law, governmental body may claim "competitive advantage" aspect of statutory predecessor). The authority, however, does not raise section 552.104. Therefore, we are unable to consider whether section 552.104 is applicable in this instance. *See* Open Records Decision No. 592 at 8 (1991) (stating that governmental body may waive section 552.104).

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, we conclude that the authority must withhold the account, credit card, and toll tag identification numbers that we have marked from disclosure pursuant to section 552.136 of the Government Code.

In summary, the authority must withhold the Texas license plate numbers and Texas driver's license number that we have marked from disclosure pursuant to section 552.130 of the Government Code. The authority must withhold the account, credit card, and tag identification numbers that we have marked from disclosure pursuant to section 552.136 of the Government Code. The authority must release the remaining submitted information to the requestor.

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 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 165903

Enc. Marked documents

cc: Mr. Gene Camanga  
P.O. Box 260143  
Plano, Texas 75026-0143  
(w/o enclosures)