



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 23, 2002

Mr. W. Lane Lanford  
Executive Director  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711

OR2002-7361

Dear Mr. Lanford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174088.

The Public Utility Commission of Texas (the "commission") received a request for the "most recent Texas no-call list[.]" You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We also received comments from two members of the Texas House of Representatives who oppose the release of the requested information. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released). We have considered all of the submitted arguments and have reviewed the submitted information.

You claim that the requested information is confidential under the Texas Telemarketing Disclosure and Privacy Act (the "Telemarketing Act"), chapter 43 of the Business and Commerce Code and section 552.101 of the Government Code.<sup>1</sup> Section 43.101 of the Telemarketing Act provides in part as follows:

- (a) The commission shall establish and provide for the operation of a database to compile a list of names, addresses, and telephone numbers of consumers in this state who object to receiving unsolicited telemarketing or telephone calls.
- (b) The commission may contract with a private vendor to maintain the Texas no-call list if:

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<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."

(1) the private vendor has maintained a national no-call list database for more than two years containing the names, addresses, and telephone numbers of consumers in this state who have previously requested to be added to the vendor's national no-call list; and

(2) the contract requires the vendor to publish the Texas portion of the national no-call list in an electronic format to any telemarketer who agrees to use the Texas no-call list only for the purposes of updating the no-call list of that telemarketer by including in its list persons with whom the telemarketer does not have an established business relationship.

(c) The Texas no-call list must contain the name, address, and telephone numbers of each consumer in this state who has requested to be on that list. The Texas no-call list shall be updated and published on January 1, April 1, July 1, and October 1 of each year.[]

Bus. & Comm. Code § 43.101. You inform us that under section 43.101, the commission has created a "Texas no-call list" of persons who object to receiving unsolicited telemarketing or telephone calls. You argue that the plain language of section 43.101 limits publication of the Texas no-call list to telemarketers who agree to use the information only for the purpose of complying with the Telemarketing Act.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.001(b) of the Government Code mandates that "this chapter shall be liberally construed in favor of granting a request for information." Thus, the Texas Supreme Court in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995) concluded that to determine whether certain tax information is confidential by statute the court must "giv[e] a narrow reading to the Tax Code's confidentiality provisions and a liberal reading to the [Public Information Act]." *Id.* at 679. Accordingly, statutory confidentiality under the Public Information Act requires express language that makes specific information confidential or provides that information shall not be released to the public. *See Open Records Decision No. 478 at 2 (1987)*. Further, for purposes of section 552.101, statutory confidentiality must be clearly expressed, and a confidentiality requirement will not be implied from a statutory structure. *See Open Records Decision No. 658 at 4 (1998)*. Nor does the fact that a statute grants specified persons a right of access to certain information mean that the information is confidential by law as to the public at large. *See Open Records Decision No. 478 at 2-3 (1987)*.

You have not directed our attention to any provision of section 43.101 that expressly makes the Texas no-call list confidential or provides that the information shall not be released to the public. Likewise, we are unable to locate any such language in this statute. Furthermore,

you have not explained how or why any other language in the Telemarketing Act makes the no-call list confidential by law or prohibits its public release. Thus, you have not demonstrated that the Texas no-call list is expressly made confidential under section 43.101 or any other provision of the Telemarketing Act.

You also inform this office that the Texas no-call list is maintained by a private third-party vendor under a contract with the commission. You emphasize that specific language in the contract requires the vendor to restrict access to and use of the list for the exclusive purpose of compliance with the Telemarketing Act. You do not inform us, however, of the existence of any contractual grounds to withhold the no-call list from the public. A governmental body may not withhold information from the public on the basis of a contract to do so unless the governmental body has specific statutory authority to make such a contract. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (governmental agency may not bring information within predecessor to section 552.101 by promulgation of rule); *see also* Open Records Decision Nos. 514 at 1 (1988), 479 at 1-2 (1987), 444 at 6 (1986). You do not inform us, nor do we find, that the commission has such authority under the Telemarketing Act. Thus, the commission may not withhold the no-call list from public disclosure on the basis of its contract with the vendor that maintains the list.

Lastly, we consider your arguments with regard to the purpose and intent of the Telemarketing Act. You assert that public release of the list would frustrate the purposes of the Telemarketing Act. Likewise, Representatives Solomons and Woolley contend that public disclosure of the Texas no-call list would defeat the purpose of the legislation that established the Telemarketing Act.<sup>2</sup> We note, however, that the express purpose of the Telemarketing Act is not to withhold information from the public, but rather to “protect the public against false, misleading, abusive, or deceptive practices in the telemarketing business.” *See* Bus. & Comm. Code § 43.005. You have not established, nor does our review of the Telemarketing Act reveal, how or why its stated purpose would be defeated by disclosure of the no-call list to the public. In this regard, we note that section 43.102(a) of the Telemarketing Act provides that “[a] telemarketer may not make a telemarketing call to a telephone number that has been published on the Texas no-call list more than 60 days after the telephone number appears on the then-current list.” Section 43.102 provides penalties for violations of section 43.102(a). Thus, whether a telemarketer obtains the Texas no-call list from the commission’s database under section 43.101 or under the Public Information Act, in either event the telemarketer is statutorily prohibited from contacting a person whose information appears on the list. Thus, release of the no-call list under the Public Information Act will potentially advance, and in any event will not necessarily undermine, the purpose stated in section 43.005 of the Telemarketing Act.

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<sup>2</sup>The Hon. Burt R. Solomons and the Hon. Beverly Woolley were the co-authors of the legislation that created the Texas Telemarketing Disclosure and Privacy Act. *See* Act of May 24, 2001, 77<sup>th</sup> Leg., R.S., ch. 1429, § 1, 2001 Tex. Gen. Laws 5102.

You also contend that the Telemarketing Act expresses an intent to except the Texas no-call list from public disclosure. You assert that the only construction that gives effect to all of the provisions of the Telemarketing Act is to restrict access to the no-call list to telemarketers for purposes of compliance with the law and to except the list from disclosure under the Public Information Act. You have not directed our attention, however, to any language in the Telemarketing Act that reflects that the legislature intended to withhold the no-call list from the public. See Open Records Decision Nos. 644 at 4 (1996) (citing *Republicbank Dallas v. Interkal, Inc.*, 691 S.W.2d 605 (Tex. 1985)) (when interpreting unambiguous statute, effect must be given to its clear and plain language), 629 at 2 (1994) (citing *Lumberman's Underwriters v. State Bd. of Ins.*, 502 S.W.2d 217 (Tex. Civ. App.--Austin 1973, writ ref'd n.r.e.)) (when language of statute is unambiguous, it must be given effect without any attempt to construe or interpret it). Therefore, having considered all of your arguments, we conclude that you have not shown that the Texas no-call list is excepted from disclosure under section 552.101 of the Government Code as information considered to be confidential by law. As you raise no other exception to public disclosure, you must release the requested information.

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).

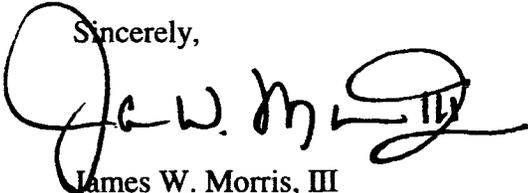
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 174088

Enc: Submitted information

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