



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

March 14, 2003

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2003-1713

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177989.

The Texas Department of Public Safety (the "Department") received two requests for the names, addresses and dates of violations of individuals who have received citations for moving violations in Tom Green and Taylor counties from July 21, 2002 through November 9, 2002. The Department asserts the requested information is excepted from disclosure under section 552.130 of the Government Code. In addition, the Department contends it cannot lawfully disclose the requested information pursuant to section 521.051 of the Transportation Code. We have reviewed the representative sample of information you submitted and we have considered your arguments.<sup>1</sup>

Initially, we address your acknowledgment of the Department's failure to meet its burden under section 552.301 of the Government Code. According to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request.

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<sup>1</sup> 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 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 that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). In this case, you state the Department received the first request for information on November 5, 2002. You should have submitted your request for an attorney general opinion no later than November 20, 2002. The Department should have forwarded all other required documentation to this office by November 27, 2002. We received your letter requesting an opinion from our office and your support documentation on January 10, 2003. Therefore, we find that you did not request a ruling from this office or submit the required information within the prescribed periods. Consequently, we conclude the Department failed to comply with the requirements of subsections 552.301(b) and 552.301(e) of the Government Code.

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. A governmental body must release information presumed public unless it demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or the information impacts third party interests. Open Records Decision No. 150 at 2 (1977). Because this request for information implicates possibly confidential information and the privacy interests of individuals, compelling reasons exist to overcome the presumption of openness. Accordingly, we will address your arguments despite the Department's failure to comply with section 552.301 of the Government Code.

Section 521.051 of the Transportation Code states the Department "may not disclose class-type listings from the basic driver's license file to any person" except in certain situations as described in section 521.049(c) of the Transportation Code. Section 521.049(c) provides that the department may make class-type listings available "to an official of the United States, the state, or a political subdivision of this state for governmental purposes only." You do not indicate, nor do the submitted documents reveal, that section 521.049(c) applies in this instance.

In Open Records Decision No. 618 (1993), this office determined the purpose of the statutory predecessor to section 521.051 "appears to be to relieve the department of the administrative burden of compiling a list based primarily on location and existence of traffic convictions,

*i.e.*, a class type list, when the requestor does not have individual driver's license numbers or names."<sup>2</sup> Open Records Decision No. 618 at 3. We agreed the provision limits access when the requestor seeks license listings by specific type, such as "a list of licensees who have traffic convictions on file, or a list of those who might be subject to administrative hearings to suspend their license." *Id.*

You contend the requested information constitutes a class-type listing, and therefore, the Department may not comply with the request. Based on your arguments and our review of the representative sample of information you submitted, we agree the Department may not provide the requested information to the requestor. *Id.* at 4 (1993). As we are able to make this determination, we need not address your claims under section 552.130 of the Government Code.

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).

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<sup>2</sup> In Open Records Decision No. 618 (1993), we noted that while the statute restricts access to class listings, it does not make the information confidential by law under section 552.101 of the Government Code. See Open Records Decision No. 618 at 3 n.3.

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 Dep't of Pub. 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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 177989

Enc: Submitted documents

c: Mr. A. Alberto Rosa  
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(w/o enclosures)