



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 4, 2003

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza - 9th Floor
El Paso, Texas 79901

OR2003-5401

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185283.

The El Paso Police Department (the "department") received a request for a variety of information related to the department's "continued successful implementation of SB 1074, the racial profiling law." You state that some responsive information will be released to the requestor. You indicate that some responsive information does not exist.¹ You claim that the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code and section 521.049 of the Transportation Code. You have submitted correspondence from the Texas Department of Public Safety (the "DPS") in which the DPS states that it intends not to waive any exceptions to disclosure that may apply to the requested information. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released). We have considered all arguments and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov't Code § 552.101*. Section 552.101 encompasses information that is protected from disclosure

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See Gov't Code §§ 552.002, .021, .227, .351*. The Act does not require a governmental body to prepare new information in response to a request. *See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); Economic Opportunities Dev. Corp. of San Antonio v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App. -San Antonio 1978, writ dismissed)*. A governmental body must only make a good faith effort to relate a request to information which it holds. *See Open Records Decision No. 561 at 8 (1990)*.

by other statutes. We note that section 521.051 of the Transportation Code states that the DPS "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 DPS 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." 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 [DPS] 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." 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.*

The DPS contends that the submitted information constitutes a class-type listing, and that, therefore, the department may not comply with the request. Based on our review of the submitted information, we find that no portion of the information consists of a class-type listing for the purposes of section 521.051. *See id.* at 3. Therefore, section 521.051 of the Transportation Code is inapplicable to the submitted information. Furthermore, in Open Records Decision No. 618, we also noted that, while section 521.051 restricts access to class listings, it does not make the information confidential by law under section 552.101 of the Government Code. *See id.* at 3 n.3; *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Additionally, this prohibition on the release of information does not apply to the department. *Cf.* Open Records Decision No. 155 (1977) (information not confidential when held by city as employer charged with discrimination). Consequently, even if the submitted information constituted a class-type listing, section 521.051 of the Transportation Code does not make the submitted information confidential, and it is not applicable to the department. Accordingly, we conclude that the department may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 521.051 of the Transportation Code.

Next, we address the DPS' argument under section 552.101 in conjunction with chapter 730 of the Transportation Code. Section 730.004 provides:

Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005 – 730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

(6) "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security

number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information. The term does not include:

(A) information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status; or

(B) information contained in an accident report prepared under Chapter 550 or 601.

Transp. Code § 730.003(6). Section 730.004 applies only to "personal information," which does not include "information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status." *See* Transp. Code § 730.003(6). After carefully reviewing the submitted information, we find that no portion of the information constitutes "personal information" for purposes of chapter 730 of the Transportation Code. Accordingly, we conclude that the department may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code. Consequently, the department must release the entirety of the 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).

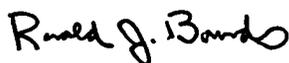
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 185283

Enc. Submitted documents

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