



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2003

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

OR2003-8711

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# 192117.

The Texas Department of Public Safety (the "department") received a request for "any and all open records" of a named trucking company. You inform us that the department will release most of the requested information. You state that you are redacting the Texas driver's license numbers and the results of the criminal history checks on the company's drivers and owners in accordance with the previous determination that we issued to the department in Open Records Letter No. 2001-2047 (2001). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination for purposes of Gov't Code § 552.301). You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and 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." Gov't Code § 552.101. You contend that the highlighted names from the federal database printouts are confidential under federal law and must be withheld pursuant to section 552.101. You explain that these printouts consist of "carrier profiles generated by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA)." You further explain:

These documents reflect compilations of data from the states regarding violations of the federal Motor Carrier Safety Regulations and accidents

involving vehicles operated by regulated carriers. This database allows Texas to obtain a record of all violations noted against an interstate carrier rather than just citations issued in this state.... The database contains names of drivers cited so regulatory authorities can more easily identify violations....

You assert that the department is advised by the FMCSA Freedom of Information Office that drivers' names are excepted from public disclosure pursuant to 5 U.S.C. § 552(b)(6) and would not be released by FMCSA. The department believes that because this information was received from a federal agency and is confidential under federal law, it should not become publicly available simply because it was shared with a Texas agency.

Section 552(b)(6) provides for confidentiality of certain information under the federal Freedom of Information Act. We conclude that the information at issue is excepted from disclosure under section 552.101 of the Government Code, as the FMCSA in this case deems it to be confidential under federal law. *See generally* Open Records Decision No. 561 (1990) (when information in possession of federal agency is "deemed confidential" by federal law, such confidentiality is not destroyed by sharing of information with governmental body in Texas). Therefore, the highlighted names in the submitted carrier profiles must be withheld pursuant to section 552.101 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).

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 192117

Enc. Submitted documents

c: Ms. Renee Williams
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(w/o enclosures)