



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2005

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

OR2005-00753

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 216471.

The Texas Department of Public Safety (the "department") received a request for communications concerning surcharge notice letters erroneously received and responses from the department, communications between the department and its vendor, Requests for Proposals, contracts, communications between the department and Municipal Services Bureau, and "[a]ny other information in any form . . . that explains how the [department] is currently implementing and planning to implement the suspension of licenses for failure to pay surcharges." You state that you will be releasing most of the requested information, but you claim that the remaining information is excepted from disclosure under sections 552.101, 552.130, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes, including chapter 521 of the Transportation Code. Section 521.051 provides that the department "may not disclose class-type listings from the basic driver's license file to any person" except in certain situations as set out in section 521.049(c) of the Transportation Code. In Open Records Decision No. 618 (1993), this office determined that 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."¹ ORD 618 at 3. In Open Records Decision No. 498 (1988) this office determined that the statutory predecessor to section 521.051 "prohibits the department from identifying the driver's license files that contain a particular type of document or information." ORD 498 at 3. In reaching this conclusion, we reasoned that requiring the department to identify files containing certain types of documents "is little different in effect from a requirement to create a specific class list, and we think it is that requirement that the legislature intended to overturn when it added" the predecessor to section 521.051(c). *Id.*

In this instance, the requestor seeks copies of correspondence about Surcharge Notice letters that were erroneously received. Complying with this request would require the department to identify the driver's license files that contain a particular type of information. Upon review of the request for information, we conclude that this is the type of request to which section 521.051 applies. Therefore, section 521.051 of the Transportation Code applies to this information, and you must withhold Exhibit B under section 521.051 of the Transportation Code.

We next address your claim that Exhibit A is excepted from disclosure under section 552.139 of the Government Code. Section 552.139 provides that:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

Gov't Code § 552.139. You do not assert that the submitted information consists of a computer network vulnerability report or any other assessment of the extent to which any data processing operation, computer program, network, system, or software of a

¹ We noted in Open Records Decision No. 618 (1993) 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 id.* at 3 n.3.

governmental body or its contractor is vulnerable to unauthorized access or harm. *See id.* § 552.139(b)(1)-(2). Accordingly, we understand you to assert that section 552.139(a) is applicable to the information at issue. After reviewing your arguments and the submitted documents in Exhibit A, we conclude that the information we have marked relates to “computer network security or to the design, operation, or defense of a computer network” and is excepted from disclosure by section 552.139(a). The remaining information in Exhibit A may not be withheld on this basis, and it must be released.

In summary, the department must withhold the information in Exhibit B under section 521.051 of the Transportation Code. The department must withhold the information we have marked in Exhibit A under section 552.139(a) of the Government Code. The remaining information must be released.

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,

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

Elizabeth A. Stephens
Assistant Attorney General
Open Records Division

EAS/krl

Ref: ID#216471

Enc. Submitted documents

c: Mr. Marc Fellman
University of Texas School of Law
727 Dean Keeton St.
Austin, TX 78705
(w/o enclosures)