



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2005

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

OR2005-06999

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# 229412.

The Texas Department of Public Safety (the "department") received a request for "a delimited file containing complete name, address, gender, birth date, and motor vehicle ticket record including dates for all persons living in Tarrant County." While you state that the department "maintains no such records," you have identified as responsive "driving records for all individuals holding driver [sic] licenses" in Tarrant County.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹We note that it is implicit in several provisions of 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); *Econ. Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*). 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).

²We 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.

Section 521.051 of the Transportation Code 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.”³ *Id* at 3. We agreed that 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 assert that the requested information is a class-type listing that the department may not provide to the requestor. Upon consideration of your arguments and review of the submitted information, we agree that section 521.051 is applicable to the information at issue. We note that 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 does it appear to this office, that section 521.049(c) is applicable in this instance. Thus, pursuant to section 521.051, the department may not provide the requested information to the requestor. *See* Open Records Decision No. 618 at 4 (1993).

Finally, you ask this office to issue a previous determination permitting the department to withhold a list of holders of a particular type of license without the necessity of requesting an attorney general decision. We decline to issue such a previous determination at this time.

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).

³We 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.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 229412

Enc. Submitted documents

c: Mr. Skip Shipe
1605 Martha Drive
Bedford, Texas 76022
(w/o enclosures)