



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2006

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

OR2006-03879

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# 246503.

The Texas Department of Public Safety (the "department") received a request for records relating to the Failure to Appear ("FTA") program during a particular time interval, including certain specified information about drivers for whom a clearance report has been filed.¹ You have submitted information that the department seeks to withhold under section 552.130 of the Government Code and section 521.051 of the Transportation Code. We have considered your arguments and have reviewed the submitted information.²

¹You indicate that the department is not in possession of some of the requested information. We note that the Act does not require the department to release information that did not exist when it received this request, create responsive information, or obtain information that is not held by or on behalf of the department. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Initially, we address the department's obligations under section 552.301 of the Government Code. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that the governmental body must ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us that the department received the instant request for information in July, 2005. You concede that the department failed to comply with section 552.301 in requesting this decision. Therefore, the submitted information is presumed to be public under section 552.302. We note, however, that the department's claims under section 552.130 of the Government Code and section 521.051 of the Transportation Code can provide compelling reasons for non-disclosure under section 552.302. Accordingly, we will consider your arguments.

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.*

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.

You state that the information available to the department that would be responsive to the instant request would consist of a list of persons who received FTA clearances over a specific period of time.⁴ You assert that “[s]uch a list is, necessarily, a list of certain driver[‘s] license holders.” You argue that such a list constitutes a class-type listing that the department may not provide to the requestor under section 521.051 of the Transportation Code. Having considered your arguments and reviewed the submitted information, we agree that section 521.051 is applicable to the information at issue. We note that under section 521.049(c), 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 state that section 521.049 is not applicable in this instance. We therefore conclude that, pursuant to section 521.051 of the Transportation Code, the department may not provide the requested information to the requestor.⁵ *See* Open Records Decision No. 618 at 4 (1993).

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, 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).

⁴You explain that a driver’s license that has been “cleared” under the FTA program indicates that the license holder has responded to a citation or paid required costs.

⁵As we are able to make this determination, we do not address your other arguments against disclosure.

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 Office of the Attorney General 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. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 249503

Enc: Submitted documents

c: Mr. Samuel T. Jackson
P.O. Box 141936
Austin, Texas 78714-1936
(w/o enclosures)