



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2009-04419

Dear Ms. Alexander:

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# 339567.

The Texas Department of Transportation (the "department") received a request for video recordings or photographs relating to a traffic accident. You state that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.¹

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 228.057 of the Transportation Code, which provides as follows:

¹This 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).

(a) For purposes of this section, a “transponder” means a device, placed on or within an automobile, that is capable of transmitting information used to assess or to collect tolls. A transponder is “insufficiently funded” when there are no remaining funds in the account in connection with which the transponder was issued.

(b) Any peace officer of this state may seize a stolen or insufficiently funded transponder and return it to the department, except that an insufficiently funded transponder may not be seized sooner than the 30th day after the date the department has sent a notice of delinquency to the holder of the account.

(c) The department may enter into an agreement with one or more persons to market and sell transponders for use on department toll roads.

(d) The department may charge reasonable fees for administering electronic toll collection customer accounts.

(e) Electronic toll collection customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

(f) A contract for the acquisition, construction, maintenance, or operation of a toll project must ensure the confidentiality of all electronic toll collection customer account information under Subsection (e).

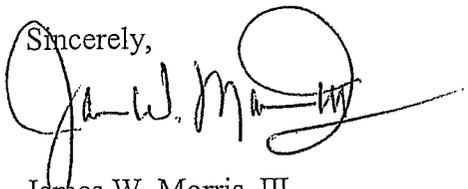
Transp. Code § 228.057. You believe that the submitted photograph may be electronic toll collection customer account information that section 228.057(e) makes confidential. You state that the photograph at issue was generated by the Digital Video Auditing System that is part of the toll management system. You also state, however, that the photograph depicts customers in a cash lane. Based on your representation that the photograph depicts cash customers, as opposed to customers who maintain electronic toll accounts, we find that the submitted photograph does not constitute electronic toll collection customer account information for the purposes of section 228.057(e). We therefore conclude that the photograph is not confidential under section 228.057 of the Transportation Code and may not be withheld on that basis under section 552.101 of the Government Code. As you claim no other exception to disclosure, the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

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

JWM/cc

Ref: ID# 339567

Enc: Submitted information

c: Requestor
(w/o enclosures)