



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2010

Ms. Terri Hamby
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773

OR2010-04465

Dear Ms. Hamby:

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# 374321 (ORA # 10-1026).

The Department of Public Safety (the "department") received a request for the following eight categories of information pertaining to the driver responsibility law: (1) for each year the law has been in effect, the number of drivers in Texas who have had to pay a surcharge as a result of the law, the amount of each surcharge, and the basis for each surcharge; (2) for each year the law has been in effect, the number of drivers in McLennan County who have had to pay a surcharge as a result of the law, the amount of each surcharge, and the basis for each surcharge; (3) for each year the law has been in effect, the number of drivers in McLennan County and in Texas who have had their driver's license revoked for failure to pay the surcharge; (4) for each year the law has been in effect, the Texas county with the highest per capita rate of surcharges assessed; (5) the Texas driver(s) with the largest number of points that resulted in a surcharge, and the basis for that surcharge; (6) the largest surcharge and the basis for that surcharge; (7) where revenues generated as a result of the law have been distributed and the amounts of each distribution; and (8) the number of licensed drivers in McLennan County and in Texas. You provide documentation showing the department has released information responsive to categories one and eight of the request. You also provide documentation reflecting the department does not have information

responsive to category seven of the request.¹ You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your argument and reviewed the submitted representative sample of information.²

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. Section 552.101 encompasses information protected by other statutes. Section 521.051 of the Transportation Code provides the department "may not disclose class-type listings from the basic driver's license record file to any person except as provided by Section 521.049(c)[.]" Transp. Code § 521.051. In Open Records Decision No. 618 (1993), this office addressed section 21(j)(3) of article 6687b of Vernon's Texas Civil Statutes, the statutory predecessor to section 521.051. Section 21(j)(3) provided the department was "not authorized to" release class-type listings. Accordingly, we noted this section did not make information confidential by law for purposes of section 552.101 of the Government Code. ORD 618 at 4 fn 3. In 1995, however, the legislature recodified section 21(j)(3) as section 521.051, and amended the language to provide "[t]he department *may not disclose* class-type listings from the basic driver's license record file" except in certain situations as set out in section 521.049(c) of the Transportation Code. *See* Act of May 12, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Gen. Laws 1025, 1549 (emphasis added). Accordingly, we conclude section 521.051 makes class-type listings confidential by law and is therefore encompassed by section 552.101 of the Government Code. Section 521.051 is applicable 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." *See* ORD 618 at 3-4.

You state the information available to the department that would be responsive to categories 2, 3, 4, 5, and 6 of the instant request would consist of lists of drivers who have either had to pay a surcharge resulting from the driver responsibility law, had their license revoked as a result of failing to pay surcharges, or incurred high rates of surcharges, along with the details surrounding those drivers' surcharges. You assert such lists would constitute class-type listings made confidential 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. Under section 521.049(c), however,

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

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.

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, and we agree, section 521.049 is not applicable in this instance. Therefore, based on your representations and our review, we conclude the department must withhold the information responsive to categories 2, 3, 4, 5, and 6 of the request under section 552.101 of the Government Code in conjunction with section 521.051 of the Transportation Code.

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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 374321

Enc. Submitted documents

cc: Requestor
(w/o enclosures)