



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2010

Mr. Robert Schell  
Assistant Director of General Counsel  
North Texas Tollway Authority  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093

OR2010-13012

Dear Mr. Schell:

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# 391725.

The North Texas Tollway Authority (the "authority") received a request for a statement of all tolls, fines, fees, invoices, and photographs or video recordings relating to a specified license plate number and all maintenance and calibration records of the equipment used to photograph or record the vehicle bearing that license plate number. You claim the submitted information is exempted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.<sup>2</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with article 28.01 of the Code of Criminal Procedure, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Additionally, although you also raise section 552.107 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we assume you have withdrawn this exception. *See* Gov't Code §§ 552.301 .302.

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

(interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion the authority failed to meet its obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) provides the governmental body must submit to this office, 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 written 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 the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D).

You state the authority received the request on June 16, 2010, and you provide a copy of the request stamped "Received by Legal JUN 16 2010." The requestor, however, claims, and provides an online confirmation printout and a certified mail return receipt indicating, the authority received the request on June 10, 2010. Accordingly, the authority's ten-business-day deadline was June 24, 2010, and the fifteen-business-day deadline was July 1, 2010. The authority submitted its request for a ruling from this office on June 24, 2010. However, the authority did not submit comments explaining why the stated exceptions apply, a copy of the written request for information, or a copy or representative sample of the information requested until July 2, 2010. Consequently, we find the authority failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim exceptions to disclosure under sections 552.103 and 552.108 of the Government Code, which are discretionary exceptions that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to

section 552.108 subject to waiver). Thus, your claim under section 552.103 does not provide a compelling reason for non-disclosure, and the authority may not withhold the submitted information under that exception. Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us the Collin County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the information at issue. Therefore, we will determine whether the authority may withhold that information on behalf of the district attorney under section 552.108.

Next, we note Attachments B and C consist of information subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Attachments B and C consist of information in an account or invoices related to the receipt of public funds. The authority may only withhold the information subject to section 552.022(a)(3) if it is confidential under other law. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. However, as noted above, this section is a discretionary exception that protects a governmental body's interests and, therefore, is not "other law" for purposes of section 552.022(a)(3). *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 586 (governmental body may waive section 552.108). Therefore, the authority may not withhold the information subject to section 552.022(a)(3) under section 552.108 of the Government Code. As you raise no further exceptions to the disclosure of this information, Attachments B and C must be released. However, we will consider your claim under section 552.108 of the Government Code for Attachment D.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Typically, section 552.108 applies only to records of law enforcement agencies. However,

it may be invoked by the proper custodian of information, such as the authority, if the records relate to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You state the district attorney has confirmed the release of Attachment D would hinder a pending prosecution. Based on your representation and our review, we conclude the authority may withhold Attachment D under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

In summary, the authority must release Attachments B and C, which are subject to section 552.022(a)(3) of the Government Code.<sup>3</sup> The authority may withhold Attachment D under section 552.108(a)(1) of the Government 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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

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<sup>3</sup>We note the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a). If the authority receives another request for this particular information from a different requestor, then the authority should again seek a decision from this office.

Ref: ID# 391725

Enc. Submitted documents

c: Requestor  
(w/o enclosures)