



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2011

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

OR2011-13517

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# 430285.

The North Texas Tollway Authority (the "authority") received a request for information relating to people who were delinquent on toll account payments during a specified time. You claim the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

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. This exception encompasses information other statutes make confidential. We understand the authority is governed by the Regional Tollway Authority Act, chapter 366 of the Transportation Code. You contend a portion of the submitted information is confidential under section 366.179 of the Transportation Code, which provides, in part:

¹We 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.

(a) For purposes of this section, a transponder is a device placed on or within an automobile that is capable of transmitting or receiving information used to assess or collect tolls. A transponder is insufficiently funded if there is no money in the account for which the transponder was issued.

...

(d) Transponder customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under [the Act].

Transp. Code § 366.179(a), (d). You inform us “[i]n connection with the operation of its toll projects, the [authority] issues transponders or ‘TollTags’ to [authority] customers wishing to establish an account with the [a]uthority.” You state portions of the submitted information consist of TollTag customer account information compiled by the authority. We therefore conclude the requested information, to the extent it consists of account information regarding TollTag customers, is subject to section 366.179(d) of the Transportation Code. Accordingly, the authority must withhold information in the submitted “Invoice Aging Report” relating to TollTag customer accounts under section 552.101 of the Government Code.

You assert the remaining information, concerning individuals who owe tolls through the authority’s ZipCash collection system but who are not TollTag transponder customers, is protected by chapter 730 of the Transportation Code. Chapter 730 of the Transportation Code is also encompassed by section 552.101 of the Government Code. Section 730.004 of the Transportation Code provides “[n]otwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004; *see also id.* § 730.003(4) (defining motor vehicle record to include a record that pertains to a motor vehicle operator’s or driver’s license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state). For purposes of chapter 730 of the Transportation Code, section 730.013 provides in part:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

Id. § 730.013(a)-(b). You state the authority uses license plate numbers collected through the ZipCash system to obtain information regarding the vehicles' owners from the Texas Department of Motor Vehicles ("the department"). We note the department is an agency under section 730.003(1) that obtains or compiles motor vehicle records. *See id.* § 730.003(1). We further note the names and addresses of the owners of Texas registered vehicles obtained by the authority from the department are considered personal information under section 730.003(6). *See id.* § 730.003(6) (personal information means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, and address, but not zip code, telephone number, or medical or disability information). Accordingly, we find that, by obtaining motor vehicle information from the department to assist the authority in carrying out its functions, the authority is an authorized recipient of personal information for purposes of section 730.013. *See id.* § 730.007(a)(2)(A)(i) (authorized recipient includes a government agency collecting information to carry out its functions).

Based upon your representations and our review of the information at issue, we conclude that, because the personal information of owners of Texas registered vehicles was obtained from the department by an authorized recipient, and because this information is in the identical or substantially identical format that it was received by the authority from the department, the personal information, other than zip codes, of owners of Texas registered vehicles who are not transponder customers is confidential under section 730.013(a) of the Transportation Code. Accordingly, as we have no indication that release of this information would be for a use permitted under section 730.007, we conclude the authority must withhold the names and addresses of owners of Texas registered vehicles who are not transponder customers under section 552.101 of the Government Code in conjunction with section 730.013 of the Transportation Code. However, you have not explained how the remaining submitted information constitutes personal information for purposes of section 730.013, and none of it may be withheld on that basis.

You raise section 2721 of title 18 of the United States Code for the remaining information. Section 2721 is also encompassed by section 552.101 of the Government Code and provides, in relevant part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

(b) Permissible uses.—Personal information referred to in subsection (a) . . . subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions[.]

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)-(c). For purposes of section 2721, section 2725 of title 18 of the United States Code defines “motor vehicle record” and “personal information” as follows:

(1) “[M]otor vehicle record” means any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

...

(3) “[P]ersonal information” means information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.

Id. § 2725(1), (3). Thus, an authorized recipient of information under section 2721 may disclose that information only in specific circumstances. Assuming, without deciding, the authority is an authorized recipient of such information, you have not explained how any of the remaining information at issue constitutes personal information for purposes of section 2721. Therefore, none of the remaining information may be withheld under

section 552.101 of the Government Code in conjunction with section 2721 of title 18 of the United States Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)); Open Records Decision No. 622 (1994). However, section 552.117 applies only to records that a governmental body holds in an employment capacity. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)) (providing that employees of governmental entities may protect certain personal information in hands of their employer); *see also id.* § 1 (to be codified as an amendment to Gov't Code § 552.024(a)) (providing that employees may elect confidentiality with main personnel officer of employing governmental body); Open Record Decision Nos. 532 (1989) (stating purpose of predecessor statute of section 552.117 is to protect certain information during and after employment relationship), 530 (discussing interplay between sections 552.024 and 552.117), 455 (1987). The requested information concerns customers of the authority. The authority does not hold this information in its capacity as an employer of any of the individuals at issue. Thus, the authority may not withhold any of the information at issue under section 552.117(a)(1) of the Government Code.

We note a portion of the remaining information is protected by section 552.130 of the Government Code.² Section 552.130 excepts from disclosure “information [that] relates to (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]” Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Therefore, the authority must withhold the license plate numbers we have marked under section 552.130.

Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument,” and includes an account number. *Id.* § 552.136(a). The authority must withhold the account number we have marked on the submitted ZipCash invoice.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the authority must withhold information in the submitted "Invoice Aging Report" relating to TollTag transponder customers under section 552.101 of the Government Code in conjunction with section 366.179 of the Government Code. The authority must withhold the names and addresses of non transponder customers we have marked under section 552.101 of the Government Code in conjunction with section 730.013 of the Transportation Code. The authority must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The remaining information must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 430285

Enc. Submitted documents

c: Requestor
(w/o enclosures)