



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 12, 2011

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

OR2011-14844

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# 432745.

The North Texas Tollway Authority (the "authority") received a request for the names and addresses of the top 50 toll violators, except those whose identity is known to the authority based on their use of a transponder, the number of tolls owed by each violator, the status of collections for each, and the total fine assessed to each. You state the authority does not maintain information concerning the fines assessed to each violator.<sup>1</sup> You state the authority has released some of the information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also considered comments

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<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 those submitted to this office.

submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we note the requestor does not list the license plate number of each violator as a category of information he requests. Some of the information you submitted consists of the license plate numbers of each violator. Thus, these license plate numbers are not responsive to the request. Our ruling does not address the public availability of information that is not responsive to the request, and the authority is not required to release non-responsive information. Accordingly, we will not address your arguments under section 552.130 of the Government Code for this information.

Next, we note the requestor specifically excludes any information relating to individuals whose identity is known to the authority because of their use of a transponder. Although you raise section 552.101 of the Government Code in conjunction with section 366.179(d) of the Transportation Code, we note this provision applies only to transponder customer account information. As this information is specifically excluded by the requestor, it is not responsive to the request, and the authority need not release it. Therefore, we will not address your assertion of section 552.101 in conjunction with section 366.179(d) of the Transportation Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 730.004 of the Transportation Code, which provides, "[n]otwithstanding any other provision of law to the contrary, including [the Act], 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 explain the information concerning the top 50 toll violators pertains to vehicles registered in Texas. You state the authority collected vehicle license

plate numbers of the toll violators through its ZipCash system. The authority used those license plate numbers to obtain information regarding the owners of the vehicles 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. Although the requestor contends the authority may redisclose the information at issue to him, you indicate release of this information is not for a permitted use under section 730.007 of the Transportation Code. Thus, the authority must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 730.013 of the Transportation Code.<sup>3</sup>

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

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining arguments against the disclosure of this information.

(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.

...

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(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 redisclose 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.

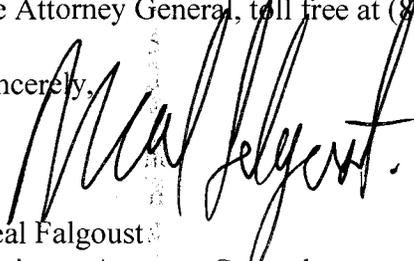
Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Upon review, we find none of the remaining information is subject to section 552.130 of the Government Code and may not be withheld on that basis.

In summary, the authority need not release information that is not responsive to the request. The authority must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 730.013 of the Transportation Code. The remaining 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 432745

Enc. Submitted documents

c: Requestor  
(w/o enclosures)