



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2011

Mr. Brian Riemenschneider
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2011-16090

Dear Mr. Riemenschneider:

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# 435176 (PIR # 11-1950).

The Texas Department of Public Safety (the "department") received a request for specified telephone numbers of applicants of a DL-92 form during a specified time period. You claim the requested telephone numbers are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We also have considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The department acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301 of the Government Code. *See id.* § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be

¹We note you have submitted a blank DL-92 form as a representative sample of responsive information for our review. Although in this instance we can determine the extent to which this fungible information may be excepted from disclosure, we advise the department in the future to submit for review the information that it seeks to protect from disclosure and for which it seeks a ruling from this office. *See* Gov't Code §§ 552.301, .302.

released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *see also 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of your claimed exception to the requested telephone numbers.

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 section encompasses information protected by other statutes. You claim the telephone numbers are confidential under the Driver’s Privacy Protection Act of 1994 (the “DPPA”), 18 U.S.C. §§ 2721-2725. The DPPA 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[.]

18 U.S.C. § 2721(a)(1). The DPPA defines “motor vehicle record” as “any record that pertains to a motor vehicle operator’s permit . . . issued by a department of motor vehicles[.]” *Id.* § 2725(1). The DPPA also defines “personal information” as “information that identifies an individual, including an individual’s . . . telephone number[.]” *Id.* § 2725(3). This office has concluded that the DPPA applies to information in the possession of the department. *See* Attorney General Opinion JC-0499 at 2 (2002). You inform us the telephone numbers are maintained in the department’s driver’s license database. Upon review of the submitted information, we find these telephone numbers pertain to motor vehicle operator’s permits issued by the department. *See* 18 U.S.C. § 2725(1). Thus, based on your representations and our review, we find the telephone numbers are personal information about individuals obtained by the department in connection with motor vehicle records. *See id.* § 2721(a)(1). In this instance, the requestor does not seek the information at issue for a use permissible under the DPPA. *See id.* § 2721(b) (listing permissible uses personal information will be disclosed for). Accordingly, we conclude the telephone numbers must be withheld under section 552.101 of the Government Code in conjunction with the DPPA. *See id.* § 2721(a)(1).

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 435176

Enc. Submitted documents

c: Requestor
(w/o enclosures)