



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2011

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

OR2011-17303

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# 437023.

The North Texas Tollway Authority (the "authority") received a request for the contact information of drivers who may have witnessed a specified accident. You claim the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is not responsive to the instant request for information. The requestor only seeks the contact information for specified drivers. Accordingly, only the submitted names, addresses, and telephone numbers are responsive to this request. The ruling does not address the public availability of the non-responsive information, and that information need not be released.

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.

Section 552.101 of the Government Code exempts 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. You state the authority is governed by the Regional Tollway Authority Act, chapter 366 of the Transportation Code. You contend a portion of the responsive information is confidential under section 366.179 of the Transportation Code, which provides, in part:

(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 responsive information consist of TollTag customer account information compiled by the authority. We therefore conclude the responsive 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 the information relating to TollTag customer accounts under section 552.101 of the Government Code.

You assert the remaining responsive information, concerning individuals who used the tollway 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.” *Id.*; *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 and telephone numbers, 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, but not zip codes, of owners of Texas registered vehicles 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 responsive 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 responsive 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). We note that the telephone numbers of the owners of vehicles registered in Texas are considered personal information for purposes of section 2725(3). *See id.* § 2725(3)(personal information means information that identifies a person, 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). As noted above, you state the authority uses license plate numbers collected through the ZipCash system to obtain information regarding the vehicles' owners from the department. Thus, we conclude 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 2721(c). *See id.* § 2721(b)(1) (providing that personal information may be disclosed by a state department of motor vehicles to any governmental entity in carrying out its functions). Therefore, because the telephone numbers at issue were obtained from a state department of motor vehicles by an authorized recipient, this information is confidential under federal law. As we have no indication that release of this information would be for a use permitted under section 2721(b), we conclude that the telephone numbers at issue must be withheld under section 552.101 of the Government Code in conjunction with section 2721(c) of title 18 of the United States Code. You have not explained, however, how any of the remaining information at issue constitutes personal information for purposes of section 2721. Therefore, none of the remaining responsive 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.

You also raise section 552.130 of the Government Code, which excepts from disclosure information that relates to 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(a)(1), (2)). Upon review, we find none of the remaining responsive information is subject to section 552.130.

In summary, in conjunction with section 552.101 of the Government Code, the authority must withhold (1) the responsive information relating to TollTag transponder customers under section 366.179 of the Government Code; (2) the names and addresses, excluding zip codes, of non transponder customers under section 730.013 of the Transportation Code; and (3) the telephone numbers of non transponder customers under section 2721 of title 18 of the United States Code. The authority must release the remaining responsive information.

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,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 437023

Enc. Submitted documents

c: Requestor
(w/o enclosures)