



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2013

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Mr. Robert Schell
Assistant Director of General Counsel
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026

OR2013-16130

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# 499457.

The North Texas Tollway Authority (the "authority") received a request for information pertaining to the passage of law enforcement vehicles through toll plazas during a specified time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The

¹We note the authority sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

²You inform us most of the submitted information falls outside of the time period specified in the request for information. Although in this instance we can determine the extent to which this fungible information may be excepted from disclosure, we advise the authority 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.

authority is governed by the Texas Regional Tollway Authority Act, chapter 366 of the Transportation Code. Section 366.179 of the Transportation Code provides:

(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 not 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 Chapter 552, Government Code.

Transp. Code § 366.179(a), (d). You explain the authority issues toll tags tied to customer accounts, and that the toll tags are transponders under section 366.179. *See id.* § 366.179(a).

You contend the submitted information is confidential pursuant to section 366.179(d). However, you acknowledge the law enforcement toll tag accounts at issue are emergency vehicles, provided with free, non-revenue transponder accounts with the authority, which do not generate tolls. Whether non-revenue toll tag transponder accounts are protected by the confidentiality afforded by section 366.179(d) depends on whether non-revenue account holders are considered “customers” as used by that section. *See id.* § 366.003(9) (“Revenue” means the tolls, rents, and other money received by an authority from the ownership or operation of a turnpike project.”).

The term “customer” is not defined in the Regional Tollway Authority Act. We note that “customer” is generally defined as “a buyer, purchaser, consumer, or patron” or “one who regularly or repeatedly makes purchases of, or has business dealings with, a tradesman or business.” BLACK’S LAW DICTIONARY 386 (6th ed. 1990); *see Henderson v. Central Power & Light Co.*, 977 S.W.2d 439, 447 (Tex.App.–Corpus Christi 1998, pet. denied) (quoting same definition from BLACK’S 348 (5th ed. 1979)); WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 559 (2002) (defining “customer” as “one that purchases some commodity or service”). Section 366.179(d) provides confidentiality only for “transponder customer account information.” Transp. Code § 366.179(d). The transponder accounts at issue in the request are complimentary and are not used to assess or collect tolls. *See id.* § 366.179(a). Accordingly, we conclude the persons who hold these transponder accounts are not customers for purposes of section 366.179(d). *See id.* § 1.002 (providing for applicability of the chapter 311, Government Code, the Texas Code Construction Act, to the Transportation Code); Gov’t Code § 311.011 (“Words and phrases shall be read in context and construed according to the rules of grammar and common usage.”); *Ex Parte Torres*, 943 S.W. 2d 469 (Tex. Crim. App. 1997) (stating that if language of statute is not ambiguous, court must give effect to plain meaning of its words unless doing so would lead to absurd

results). Consequently, the submitted information may not be withheld under section 552.101 of the Government Code on the basis of section 366.179(d) of the Transportation Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.³ *See* Gov't Code § 552.130. Accordingly, the authority must withhold the submitted license plate numbers, a representative sample of which we have marked, under section 552.130 of the Government Code.⁴

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the submitted toll tag identification numbers constitute access device numbers for purposes of section 552.136. Accordingly, the authority must withhold the toll tag identification numbers, a representative sample of which we have marked, under section 552.136 of the Government Code.⁵

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure. Further, we note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

⁵As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Id. § 552.108(a)(1), (b)(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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the 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 assert the remaining information at issue documents responses by law enforcement vehicles for law enforcement purposes. Accordingly, you claim the information at issue could include law enforcement activities associated with incidents “potentially pending further investigation” by law enforcement agencies. You also argue the information at issue could relate to law enforcement vehicles used in undercover or sensitive law enforcement operations. However, you have not indicated any specific ongoing criminal investigation or prosecution at issue. Nor have you provided any representation from a law enforcement agency asking the authority, as proper custodian of information relating to alleged criminal conduct, to withhold any of the information at issue because its release would interfere with a pending criminal investigation or prosecution. Therefore, we find the authority may not withhold any of the remaining information under section 552.108(a)(1) or 552.108(b)(1) of the Government Code.

In summary, the authority must withhold the submitted license plate numbers under section 552.130 of the Government Code and the submitted toll tag identification numbers under section 552.136 of the Government Code, a representative sample of which we have marked. The authority must release the remaining 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 499457

Enc. Submitted documents

c: Requestor
(w/o enclosures)

JAN 04 2017

At 8:57 A.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-13-003614

NORTH TEXAS TOLLWAY
AUTHORITY,
Plaintiff,

v.

THE HONORABLE KEN PAXTON,
ATTORNEY GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

345th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Texas Government Code chapter 552, in which Plaintiff North Texas Tollway Authority (NTTA), sought to withhold information requested by Mr. Shane Allen in June 2013 pertaining to the passage of law enforcement vehicles through toll plazas for a certain time period (Requested Information). The Defendant Ken Paxton is the successor to previous Attorney General Greg Abbott and has been substituted as a party pursuant to a separate Agreed Order entered by the Court (Attorney General). The Attorney General ruled in open records ruling OR2013-16130 that because law enforcement vehicles are exempt from paying toll fees, they are not customers whose information would be confidential pursuant to Texas Transportation Code section 366.179(d). *See* Tex. Att'y Gen. OR2013-16130. The Attorney General also ruled that the license plate numbers and toll tag account numbers are protected from disclosure under sections 552.130 and 552.136 of the Texas Government Code. *See id.*



During the pendency of this suit, the Legislature amended section 366.179(d) to make it so the information of all transponder account holders, whether paying customers or not, is confidential. *See* Tex. Trans. Code § 366.179(d). Section 366.179(d) provides: “Transponder account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.” *Id.*

Pursuant to Texas Government Code section 552.325(c), the Attorney General may enter into a settlement that allows all or part of the information at issue in this lawsuit to be withheld. *See* Tex. Gov’t Code § 552.325(c). The Attorney General and NTTA agree that the amendment to the Transportation Code makes the Requested Information confidential, and therefore excepted from disclosure under the Public Information Act. Therefore, all matters in controversy between NTTA and the Attorney General in this lawsuit have been settled and resolved, and the parties agree to the entry and filing of this Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court, and the Court hereby takes judicial notice, that in compliance with section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Mr. Shane Allen, on November 21, 2016, providing reasonable notice of the settlement memorialized in this Agreed Final Judgment. The requestor was informed of the parties’ agreement that NTTA must withhold the information at

issue. The requestor was also informed of his right to intervene in the suit to contest the NTTA's right to withhold the information. The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment is appropriate, disposing of all claims between these parties.

THEREFORE, THE PARTIES AGREE, AND THE COURT ADJUDGES, ORDERS AND DECLARES THAT:

1. The Requested Information, transponder account information of law enforcement vehicles, including contact and payment information and trip data, is confidential and not subject to disclosure under chapter 552 of the Texas Government Code pursuant to Texas Government Code section 552.101 in conjunction with Texas Transportation Code section 366.179(d). The portion of the Requested Information consisting of license plate numbers and toll tag account numbers remains protected from disclosure for the additional reasons set forth in open records ruling OR2013-16130.

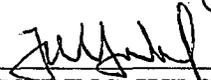
2. NTTA must withhold from the requestor the information described in Paragraph 1 of this order.

3. All court cost and attorney fees are taxed against the parties incurring the same;

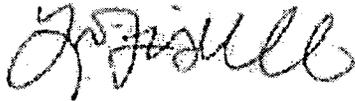
4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims of all parties in this cause and is a final judgment.

SIGNED the 4th day of January, 2017.


PRESIDING JUDGE
TIM SULAK

AGREED:



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DATE: 01 / 03 / 2017



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DATE: 1 / 3 / 2017