



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 20, 2017

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2017-01390

Dear Ms. Parker:

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# 642401.

The Texas Department of Transportation (the "department") received a request for three categories of information related to complaints pertaining to the North Texas Tollway Authority ("NTTA") during a specified time period, a copy of the latest Regional Tolling Services Agreement between the department and NTTA, and copies of any additional contracts to which NTTA is a party.¹ You state you have released some information. You claim the submitted information is 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.²

¹We note the department 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); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We 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 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 that other statutes make confidential, such as section 228.057 of the Transportation Code, which provides in part:

(e) Electronic toll collection 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 § 228.057(e). The term “customer” is not defined in the Transportation Code. We note “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 LAW DICTIONARY 348 (5th ed. 1979)); WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 559 (2002) (defining “customer” as “one that purchases some commodity or service”).

The department states the submitted information includes electronic toll collection customer account information. The department states the information at issue pertains to actual customers who have made purchases in the TxTag or pay by mail toll programs. Based on the department’s representations and our review, we find the information we have marked falls within the scope of section 228.057(e). *See* Transp. Code § 228.057(e) (for purposes of Transp. Code § 228.057, “account information” includes contact and payment information and trip data). Thus, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 228.057(e) of the Transportation Code.³ However, we find none of the remaining information consists of the department’s customer account information or trip data. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 228.057(e) of the Transportation Code.

We note NTTA is governed by the Texas Regional Tollway Authority Act, chapter 366 of the Transportation Code. Section 366.179 of the Transportation Code provides in relevant part the following:

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

³As our ruling is dispositive, we need not address the department’s remaining argument against disclosure of this information.

...

(d) Transponder 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 some of the remaining submitted information pertains to NTTA transponder account information and NTTA TollTag customer account information, including contact and payment information and trip data. Based on the department's representations and our review, we find the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 366.179(d) of the Transportation Code.⁴ However, we find none of the remaining information consists of NTTA customer account information or trip data within the scope of section 366.179 of the Transportation Code. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 366.179(d) of the Transportation Code.

Next, the department raises section 552.101 of the Government Code in conjunction with section 366.178 of the Transportation Code which provides in relevant part:

(b-1) As an alternative to requiring payment of a toll at the time a vehicle is driven or towed through a toll assessment facility, the [regional tollway authority] shall use video recordings, photography, electronic data, transponders, or other tolling methods to permit the registered owner of the nonpaying vehicle to pay the toll at a later date or provide toll exemptions. Information collected under this subsection, including contact, payment, and other account information and trip data, is confidential and not subject to disclosure under [the Act].

Id. § 366.178(b-1). Upon review, we find you have failed to demonstrate any of the remaining information consists of information made confidential under section 366.178(b-1). Therefore, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with section 366.178(b-1) of the Transportation Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 228.057(e) and 366.179(d) of the Transportation Code. The department must release the remaining information.

⁴As our ruling is dispositive, we need not address the department's remaining argument against disclosure of this 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

Ref: ID# 642401

Enc. Submitted documents

c: Requestor
(w/o enclosures)