



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 17, 2017

Ms. Helen Johnson
Paralegal
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026

OR2017-15867

Dear Ms. Johnson:

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# 673241 (ORR# 2017-01568).

The North Texas Tollway Authority (the "authority") received a request for photographs of a car with a specified license plate. The authority claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the authority claims and reviewed the submitted information.

Initially, we must address the authority's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The authority received the request for information on June 7, 2017. The authority does not inform us it was closed for any business days between June 7, 2017, and June 21, 2017. Accordingly, the authority was required to provide the information required by section 552.301(b) by June 21, 2017. However, the envelope in which the authority provided the information required by section 552.301(b) was postmarked June 23, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the authority failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The authority claims section 552.101 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the authority's argument under this exception against release of the submitted information.

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. Section 552.101 encompasses information other statutes make confidential. The authority is governed by the Texas Regional Tollway Authority Act, chapter 366 of the Transportation Code. Section 366.178 of the Transportation Code 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 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 Chapter 552, Government Code.

Transp. Code § 366.178(b-1). The authority informs us as an alternative to payment of a toll at the time a vehicle is driven on the authority's tollway, the authority permits individuals to pay a higher toll rate at a later date through the ZipCash invoicing system. The authority states the submitted information was collected by the authority pursuant to this subsection "to identify the registered owner of the nonpaying vehicle and issue the ZipCash invoice or provide toll exemptions[.]" Based on these representations and our review, we find the authority must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 366.178(b-1) of the Transportation Code.

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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a long horizontal flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 673241

Enc. Submitted documents

c: Requestor
(w/o enclosures)