



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2020

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78207

OR2020-01377

Dear Mr. Kopp:

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# 802725 (COSA File Nos. W285565, W285679, W285797).

The City of San Antonio (the "city") received three requests for information pertaining to financial skimmers during a specified time period, including location, case number, date, and number of skimmers found. 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 information.

Initially, we note the requestors seek only certain categories of information pertaining to financial skimmers. You have submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted information that do not consist of the information requested are not responsive to the present requests. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to these requests.

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 subject to chapter 607 of the Business and Commerce Code, which pertains to payment card skimmers on motor fuel dispensers. Section 607.056 provides, in relevant part, as follows:

(a) Except as otherwise provided by this section, information is confidential and not subject to disclosure under Chapter 552, Government Code, if the information is:

- (1) from a report received by [the Texas Department of Agriculture (the “department”)] under Section 607.053 or 607.054; or
- (2) prepared or compiled by the department in connection with the report or an investigation conducted under this subchapter[.]

Bus. & Comm. Code § 607.056; *see also id.* § 607.001(2) (defining “department” for purposes of chapter 607 of the Bus. & Comm. Code to mean the state agency that is the licensing authority for service companies and service technicians), (7); Agric. Code §§ 1.003(2), 13.451(2)-(3) (designating the Texas Department of Agriculture as licensing authority for service companies and service technicians). We note section 607.054 permits “[a]n interested person to submit a report of the discovery of a skimmer on an unattended payment terminal of a motor fuel dispenser at a merchant’s place of business to the department,” but does not require an interested person do so. *See id.* § 607.054(b); *see also id.* § 607.054(a) (defining “interested person” for purposes of Chapter 607 of the Bus. & Comm. Code).

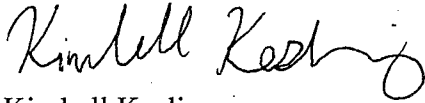
You inform us the information at issue was not reported to the department pursuant to section 607.053 or section 607.054 of the Business and Commerce Code. Further, we have no indication the information at issue was prepared or compiled by the department in connection with the report or an investigation conducted under subchapter B of chapter 607. Accordingly, we find the responsive information is not confidential pursuant to section 607.056 of the Business and Commerce Code and thus, the city may not withhold any of the responsive information under section 552.101 of the Government Code on that basis. The city must release the responsive information.

Finally, you ask this office to issue a previous determination that certain information is not confidential under section 607.056 of the Business and Commerce Code. *See Gov’t Code* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Kimbell Kesling".

Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 802725

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)