



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 15, 2020

Mr. Jeffrey C. Monk  
Administration Manager  
City of Houston  
1200 Travis, 21<sup>st</sup> Floor  
Houston, Texas 77002-6000

OR2020-01516

Dear Mr. Monk:

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# 803982 (ORU No. 19-10788).

The Houston Police Department (the "HPD") received a request for information regarding credit card skimmers during a specified date range. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and the HPD acknowledges, the HPD did not comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. 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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The HPD claims section 552.101 of the Government Code for the submitted information. Because section 552.101 can provide

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<sup>1</sup> Although the department raises section 552.107 of the Government Code, the department provides no argument explaining how this exception is applicable to the information at issue. Therefore, we assume the department no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

compelling reasons to overcome the presumption of openness, we will address the HPD's arguments under this exception against release of the submitted information.

Next, we note the HPD has not submitted information responsive to the portion of the request seeking police reports. To the extent any information responsive to this portion of the request existed on the date the HPD received the request, we assume the HPD has released it. If the HPD has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 state the information at issue consists of information "originating from, and maintained in, [the HPD's] credit card skimmer database[.]" Upon review, we find you have failed to demonstrate the information at issue was 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 submitted information is not confidential pursuant to section

607.056 of the Business and Commerce Code. Therefore, the HPD may not withhold any of the submitted information under section 552.101 of the Government Code on that basis. As you raise no further exceptions to disclosure, the HPD must release the submitted 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 <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,

  
Katie Stallcup  
Attorney  
Open Records Division

AKS/eb

Ref: ID# 803982

Enc. Submitted documents

c: Requestor  
(w/o enclosures)