



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2022

Ms. Mia Settle Vinson
Open Records Attorney
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711-2157

OR2022-05503

Dear Ms. Vinson:

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# 930366 (TDLR Request Reference No. R005097-112221).

The Texas Department of Licensing and Regulation (the "department") received a request for reports on gas pump skimming incidents for a specified time period. We understand the department will withhold certain motor vehicle record information under section 552.130(c) of the Government Code and personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ 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

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* 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 id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

² We 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 that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts 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 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.

...

(d) On the dismissal or final resolution of a report by the department, information described by Subsection (a) is subject to disclosure under Chapter 552, Government Code.

Bus. & Comm. Code § 607.056(a), (d); *see also id.* §§ 607.053 (requiring service technician or merchant to report discovery of a skimmer to the department), .054 (department may accept report of suspected skimmer from any interested person).

You state the submitted information consists of “suspected and substantiated skimmer reports and investigations” performed by the department under section 607.055 of the Business and Commerce Code. *See id.* § 607.055(a) (providing on receipt of a report under Section 607.053 or 607.054, the department may conduct an inspection for the presence of suspected skimmers). You state some of the submitted information consists of completed investigations. Upon review, we are unable to determine if the submitted reports resulted in dismissals or final resolutions by the department. Accordingly, we rule conditionally. If the submitted reports did not result in dismissals or final resolutions by the department, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 607.056(a) of the Business and Commerce Code. However, if the submitted reports did result in dismissals or final resolutions by the department, they are not made confidential by section 607.056(a) of the Business and Commerce Code and the department may not withhold them under section 552.101 of the Government Code on that basis. *See id.* § 607.056(d). In that instance, as the department raises no other arguments against release, the department must release the submitted information.

Finally, you ask this office to issue a previous determination permitting the department to withhold skimmer reports and investigations under section 552.101 of the Government Code in conjunction with section 607.056(a) of the Business and Commerce Code without requesting a ruling from this office. *See Gov’t Code* § 552.301(a) (allowing governmental

body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). However, we decline to do so at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 930366

c: Requestor