



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 5, 2008

Ms. Susan Camp-Lee  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2008-15210

Dear Ms. Camp-Lee:

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# 326993.

The City of Round Rock (the "city"), which you represent, received a request for responses by all bidders to RFP 07-027, excluding the requestor's response, and the evaluation/scoring sheet related to the RFP. Although you raise no exceptions to disclosure on behalf of the city, you claim that release of the submitted information may implicate the proprietary interests of involved third parties. You inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, you notified Redflex Traffic Systems, Inc. ("Redflex") and LaserCraft of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note that you have not submitted the requested evaluation/scoring sheet for our review. To the extent the evaluation/scoring sheet existed on the date the city received this request, we assume you have released it to the requestor. If you have not released any such information, you must release it at this time. *See* Gov't Code §§552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to the party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Redflex and LaserCraft have not submitted to this office any reasons explaining why the submitted information should not be released. Therefore, Redflex and LaserCraft have failed to provide us with any basis to conclude that they have a protected proprietary interest in any of the submitted information, and none of their information may be withheld on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note that some of the submitted information is subject to sections 552.130 and 552.136 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. We note that section 552.130 does not apply to out-of-state motor vehicle record information. Accordingly, the city must withhold the submitted Texas license plate information pursuant to section 552.130. We have marked a representative sample of the information the city must withhold pursuant to section 552.130 of the Government Code.

Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136. Therefore, the city must withhold the checking account numbers and the insurance policy numbers we have marked under section 552.136 of the Government Code.

Finally, we note that some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, we have marked a representative sample of information the city must withhold pursuant to section 552.130 of the Government Code. The city must withhold the information we have marked pursuant to section 552.136 of the Government Code. The city must release the remaining submitted information, but any information protected by copyright must be released in accordance with copyright law.

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 example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

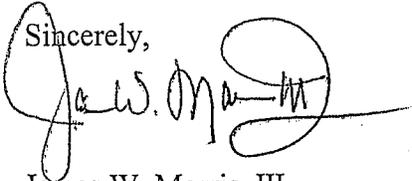
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/jb

Ref: ID# 326993

Enc. Submitted documents

c: Ms. Kandus Mayberry  
Marketing Analyst  
American Traffic Solutions, Inc.  
14861 North Scottsdale Road, Suite 109  
Scottsdale, Arizona 85254  
(w/o enclosures)

Mr. Aaron M. Rosenberg  
Redflex Traffic Systems, Inc.  
15020 North 74<sup>th</sup> Street  
Scottsdale, Arizona 85260  
(w/o enclosures)

Mr. Scott W. Patterson  
President and CEO  
LaserCraft  
1450 Oakbrook Drive, Suite 900  
Norcross, Georgia 30093  
(w/o enclosures)