



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2010

Ms. P. Armstrong  
Assistant City Attorney  
City of Dallas  
Criminal Law and Police Division  
1400 South Lamar  
Dallas, Texas 75215

OR2010-07654

Dear Ms. Armstrong:

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# 380750.

The Dallas Police Department (the "department") received a request for the following information: 1) the name of the information technology ("IT") person for the department, 2) the department's standard operating procedure and/or policies and procedures regarding videos of driving while intoxicated ("DWI") arrests, specifically, how they are uploaded from the officer's patrol car and what is done to ensure these videos are preserved, 3) information concerning a named officer, 4) the total number of DWI arrests made by the named officer since his hire date, and 5) all computer aided dispatch data and all mobile data terminal transmissions involving the named officer regarding incidents that occurred on September 21, 2009 between the hours of 3:00 a.m. and 5:00 a.m. Although the department takes no position with respect to the public availability of the submitted user manual, you indicate the release of the user manual may implicate the proprietary interests of Digital Safety Technologies, Inc. ("Digital Safety"). Accordingly, you state, and provide documentation showing, the department notified Digital Safety of the department's receipt of the request for information and of Digital Safety's right to submit arguments to this office as to why its user manual should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to

section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered comments submitted by Digital Safety and reviewed the submitted user manual.

Initially, we note you have not submitted information responsive to the requests for: 1) the name of the IT person for the department, 2) information concerning a named officer, 3) the total number of DWI arrests made by the named officer since his hire date, and 4) all computer aided dispatch data and all mobile data terminal transmissions involving the named officer regarding incidents that occurred on September 21, 2009 between the hours of 3:00 a.m. and 5:00 a.m. To the extent information regarding this portion of the request existed on the date the department received this request, we assume you have released it. If you have not released any such information, you 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 that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The department acknowledges it received the request on February 22, 2010. The department did not, however, request a ruling until March 23, 2010. Consequently, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released unless a compelling reason exists 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); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider Digital Safety's arguments against disclosure of the user manual.

Section 552.110(b) of the Government Code protects the proprietary interests of private parties with respect to "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or

generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Digital Safety generally asserts release of its user manual would cause it severe damage and hardship because its user manual contains a substantial amount of its confidential and proprietary information. Digital Safety has not, however, identified the proprietary information it seeks to withhold within the user manual. Furthermore, Digital Safety has not provided any specific factual evidence demonstrating how the release of any information in its user manual would cause the company substantial competitive harm. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Therefore, no portion of the user manual is excepted under section 552.110(b).

Digital Safety further asserts release of internal IP addresses contained in the user manual would cause a security risk to Digital Safety and its customers. Digital Safety, has not, however, raised any exceptions to disclosure under the Act or cited any law which would except this information from disclosure, nor are we aware of any such law. Accordingly, the internal IP addresses may not be withheld from disclosure.

Finally, we note the user manual is copyrighted. 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 copyrighted materials 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). Accordingly, the user manual must be released to the requestor in accordance with copyright law.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 380750

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)