



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2010

Mr. Steven L. Weathered
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OR2010-08825

Dear Mr. Weathered:

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# 382909 (League City PIR Nos. 10-145 & 10-146).

The City of League City (the "city"), which you represent, received a request for photographs of violations taken by a red light camera at a certain intersection during a specified period, and photographs of violations from that intersection which were dismissed. You claim the responsive information is not subject to the Act. You also state you notified Redflex Traffic Systems, Inc. ("Redflex") of the request for information and of the company's right to submit arguments to this office as to why the information should not be released. 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 certain circumstances). We have considered the submitted arguments.

Both the city and Redflex state the responsive information is held by Redflex, a private entity. Because the city's contract with Redflex does not permit an unlimited right of access to the responsive information, both the city and Redflex argue the information is not "public information" subject to the Act. Section 552.002 of the Act provides "public information" subject to the Act consists of information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Whether information prepared by a private party on behalf of a governmental body is in the physical custody of a governmental body is not determinative of whether the information is subject to the Act. *See, e.g.*, Open Records Decision Nos. 558 (1990), 499 (1988), 462 (1987). The test for whether the Act applies to information held by outside parties is whether: (1) the information relates to the governmental body's official duties or business; (2) the consultant acts as agent of the governmental body in collecting the information; and (3) the governmental body has or is entitled to access to the information. ORDs 499 at 2, 462 at 4. In Open Records Decision No. 518 (1989), this office determined that "if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to [the Act]." ORD 518 at 2-3; *see* Open Records Decision Nos. 445 (1986), 437 (1986), 317 (1982). Pursuant to its contract with the city, Redflex sets up cameras that monitor certain traffic intersections in the city. The stated "mutual objective of both Redflex and the [city]" of this contract is "to reduce the incidence of vehicle collisions at the traffic intersections and city streets[.]" This objective is accomplished by capturing photographs of vehicles violating traffic laws at the monitored intersections, and issuing citations to the owners of those vehicles, thereby deterring drivers from violating the law. Redflex creates and collects the photographic evidence of violations, and provides this information to a city employee who determines whether a citation should be issued. If the city employee decides a citation is appropriate, Redflex issues a citation to the appropriate vehicle owner. We find the detection and citation of individuals for violations of the city's traffic laws, which are services Redflex provides pursuant to its contract with the city, are law enforcement activities traditionally carried out by governmental bodies. Thus, in performing these law enforcement functions, Redflex is providing services that would otherwise be undertaken by the city as part of its official duty of law enforcement. Accordingly, we conclude the photographs are collected and maintained by Redflex as an agent for the city and in connection with the city's official business.

We next consider whether the city owns or has a right of access to the responsive information. Open Records Decision No. 492 (1988) concerned a similar request for information that was held in a private third party's computers and which was available to the governmental body pursuant to contract and only through telephone link access. In that ruling, we determined any information on the third party's system that was actually accessed and used by the governmental body had been provided to the governmental body "just as if the information was provided . . . in hard copy." ORD 492 at 3. Thus, any information the governmental body could access through the telephone link was "public information" subject to the Act. In this instance, the contract between the city and Redflex provides the city with the right to remotely connect to Redflex's system and review the responsive information for the purpose of determining whether a citation should be issued. In fact, because citations for violations of the city's laws must be authorized by the city, this right of the city to review the

photographic evidence collected by Redflex is essential to the performance of the city's duty of law enforcement. Additionally, we presume such photographic evidence would be provided to the city in connection with its prosecution of the citations issued on the basis of violations detected by Redflex systems. Therefore, we find the city's contractual right to review the responsive information in connection with its duty of law enforcement is sufficient to establish the city's right of access to this information for purposes of section 552.002. Thus, we conclude the requested information is "public information" subject to the Act.

The city argues its contract with Redflex prohibits release of the responsive information. Likewise, Redflex contends the requested information is excepted from disclosure pursuant to the terms and conditions of a contract it has with the National Law Enforcement Telecommunications System, Inc. ("NLETS"). However, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Redflex also raises section 552.110(b) for the responsive information. 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).

Redflex claims release of the responsive photographs would indirectly cause it substantial competitive harm because such release could be considered a violation of the company's contract with NLETS. However, Redflex does not provide any arguments explaining how the responsive photographs themselves, apart from any contract Redflex may have entered into, contain or consist of commercial or financial information the release of which would cause the company substantial competitive harm. Therefore, no portion of the responsive photographs is excepted under section 552.110(b).

Redflex's arguments indicate the responsive information may contain Texas motor vehicle record information that company receives from NLETS. We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's

license number, a Texas license plate number, and the portion of a photograph that reveals a license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. ORD 684. Therefore, with the exception of any information the city may be authorized to withhold pursuant to Open Records Decision No. 684, the city must release the requested photographs in their entirety to the requestor.

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, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 382909

cc: Requestor
(w/o enclosures)

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