



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2010

Mr. K. Jefferson Bray
Senior Legal Advisor
Plano Police Department
P.O. Box 860358
Plano, Texas 75086

OR2010-14027

Dear Mr. Bray:

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# 393640.

The Plano Police Department (the "department") received a request for codes or passwords sufficient to permit access to the database containing issued notices of violation and evidence available to support the department's claims for payment under the City of Plano's (the "city's") red light enforcement program during a specified period, or, in the alternative, copies of such notices and evidence. 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.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note you neither submitted (1) codes or passwords sufficient to permit the requestor access to the database containing notices of violations issued during the specified period, nor (2) the notices themselves. We assume that to the extent one of these two categories of information existed when the department received the request for information,

¹We 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.

you have either provided access to the database containing the notices or released the notices to the requestor. If not, then you must do so at this time. *See id.* §§ 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, the requestor claims that because the video and photographic evidence of alleged violations are routinely disclosed in open court proceedings, such information may not now be withheld from disclosure. We agree the Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Therefore, to the extent the submitted information has been voluntarily disclosed to the public, it may not now be withheld unless its disclosure is expressly prohibited by law or it is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). However, sections 552.101 and 552.130 of the Government Code make information confidential by law.² Therefore, any information that is excepted under those sections must be withheld from disclosure, regardless of whether such information has been voluntarily disclosed for purposes section 552.007. *See* Gov't Code § 552.007(a). Accordingly, we address the applicability of those exceptions to any submitted information that has been previously disclosed along with the remaining submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section excepts from disclosure information deemed confidential by statute, such as section 730.004 of the Transportation Code, which provides that "[n]otwithstanding any other provision of law to the contrary, including [the Act], except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004; *see also id.* § 730.003(4) (defining "motor vehicle record" to include a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state). Section 552.101 also encompasses section 730.013, which provides that for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

²The 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).

(c) Any authorized recipient who resells or rediscloses personal information obtained from an agency shall be required by that agency to:

(1) maintain for a period of not less than five years records as to any person or entity receiving that information and the permitted use for which it was obtained; and

(2) provide copies of those records to the agency on request.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$25,000.

Id. § 730.013. You state the city contracts with a third party, Redflex Traffic Solutions (“Redflex”), to provide support for its red light camera enforcement program. You explain that Redflex, on behalf of the city, uses red light cameras to obtain the license plate numbers of vehicles that proceed through intersections against the light. You further explain Redflex then uses the license plate numbers to obtain additional motor vehicle record information from the Texas Department of Transportation (“TxDOT”). We note TxDOT is an agency under section 730.003(1) that obtains or compiles motor vehicle records. We also note “personal information” means information that identifies a person, including an individual’s photograph or computerized image, social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information. *See id.* § 730.003(6); *see also id.* § 730.003(5) (“person” means an individual, organization, or entity other than this state or an agency of this state). Accordingly, we find that by obtaining motor vehicle information from TxDOT to assist the city in carrying out its functions, Redflex is an authorized recipient of personal information for purposes of section 730.013. *See id.* § 730.007(a)(2)(A)(ii) (authorized recipient includes a private entity acting on behalf of a government agency in carrying out the agency’s functions).

The submitted information consists of screen captures from Redflex’s online violation authorization tool. We understand the department reviews these screen captures to verify possible red light violations. These screen captures contain both the images of license plates and the personal information Redflex acquires from TxDOT. We have marked the name and address information, excluding zip codes, in the submitted screen captures. We understand this information is in the identical or substantially identical format that it was received by Redflex from TxDOT. Therefore, because this personal information was obtained from TxDOT by an authorized recipient, the information we have marked is confidential under section 730.013(a) of the Transportation Code. Accordingly, as we have no indication that release of this information would be for a use permitted under section 730.007, we conclude that the personal information we have marked must be withheld under section 552.101 of the Government Code. However, it is not evident, and you do not explain, how the remaining information in these screen captures consists of “personal information” for purposes of chapter 730. *See id.* § 730.003(6). Therefore, we conclude the remaining information is not made confidential by section 730.013(a) and may not be withheld under section 552.101 on

that basis. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

Some of the remaining information is subject to section 552.130 of the Government Code. 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(a)(2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³

In summary, the department must withhold the personal information we have marked under section 552.101 of the Government Code in conjunction with section 730.013(a) of the Transportation Code, as well as the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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/tp

³We 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 license plate number and the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)