



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

Ms. Evelyn W. Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-17533

Dear Ms. Njuguna:

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# 400877.

The Houston Police Department (the "department") received a request for (1) a list of the top fifty worst repeat or habitual offenders of running red lights in the City of Houston (the "city") since September 2006, including the offenders' names, addresses, and the number of offenses and (2) a copy of all raw footage taped in connection with a specified forthcoming video. You state the department has no information responsive to item two of the instant request.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 information.

Initially, we note some of the submitted information is not responsive to the request as it does not consist of the names, addresses, or the number of offenses of the fifty worst repeat or habitual offenders of running red lights in the city since September 2006. We have marked

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

this non-responsive information. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Section 552.101 of the Government Code excepts 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 section 730.013 of the Transportation Code, 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.

(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.

Transp. Code § 730.013. You state the department contracts with a third party, American Traffic Solutions (“ATS”), to operate red light cameras at intersections. We understand the city uses these cameras to photograph the license plates of vehicles that illegally proceed through intersections. You state ATS then uses the license plate numbers of Texas registered vehicles to obtain additional motor vehicle record information from the Texas Department of Public Safety (“DPS”). We note DPS is an agency under section 730.003(1) that obtains or compiles motor vehicle records. We further note the names and addresses of the owners of Texas registered vehicles obtained by ATS from DPS are considered personal information under section 730.003(6). *See id.* §730.003(6) (personal information means information that identifies a person, including an individual’s photograph or computerized image, social security number, driver identification number, name, and address, but not zip code, telephone number, or medical or disability information). Accordingly, we find, by obtaining motor

vehicle information from DPS to assist the city in carrying out its functions, ATS 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).

Based upon your representations and our review of the information at issue, we conclude, because the names and addresses of owners of Texas registered vehicles were obtained from DPS by an authorized recipient, and because this information is in the identical or substantially identical format it was received by ATS from DPS, the submitted names and addresses, other than zip codes, of owners of Texas registered vehicles are confidential under section 730.013(a) of the Transportation Code. Accordingly, as we have no indication release of this information would be for a use permitted under section 730.007, we conclude the department must withhold the names and addresses, other than zip codes, of Texas registered vehicles under section 552.101 of the Government Code.

To the extent the remaining responsive information relates to individuals whose vehicles are registered in states other than Texas, we consider your argument under section 2721 of title 18 of the United States Code, which is also encompassed by section 552.101 of the Government Code. Section 2721 provides in pertinent part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records

identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

See 18 U.S.C. § 2721(a), (c). Some of the remaining responsive information, consisting of the names and addresses of owners of vehicles registered in states other than Texas, is considered personal information for purposes of section 2725(3). *See id.* § 2725(3) (personal information means information that identifies a person, including an individual's photograph, social security number, driver identification number, name, address, but not the 5-digit zip code, telephone number, and medical or disability information). We understand ATS uses the license plate numbers obtained from the red light cameras to procure additional motor vehicle record information from other states' equivalents to DPS. Thus, we conclude, by obtaining motor vehicle information from other state agencies to assist the city in carrying out its functions, ATS is an authorized recipient of personal information for purposes of section 2721(c). *See id.* § 2721(b)(1) (providing that personal information may be disclosed by a state department of motor vehicles to any entity acting on behalf of a Federal, State, or local agency in carrying out its functions). Therefore, to the extent the remaining responsive information was obtained from a state department of motor vehicles by an authorized recipient, any such information is confidential under federal law. As we have no indication release of this information would be for a use permitted under section 2721(b), we conclude, to the extent the information was obtained from a state department of motor vehicles by an authorized recipient, the department must withhold the names and addresses, other than zip codes, of owners of vehicles registered in states other than Texas under section 552.101 of the Government Code in conjunction with section 2721(c) of title 18 of the United States Code.

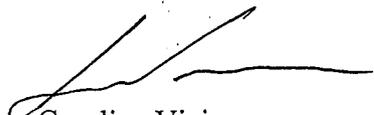
In summary, the department must withhold the names and addresses, other than zip codes, of owners of Texas registered vehicles under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code. The department must withhold the names and addresses, other than zip codes, of owners of vehicles registered in states other than Texas under section 552.101 of the Government Code in conjunction with section 2721 of title 18 of the United States Code, to the extent such information was obtained from a state department of motor vehicles by an authorized recipient. As you raise no further arguments against disclosure of the remaining responsive information, it 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 400877

Enc. Submitted documents

c: Requestor
(w/o enclosures)