



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2011

Ms. Alexis G. Allen
Counsel for the City of Duncanville
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2011-09852

Dear Ms. Allen:

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# 423911.

The City of Duncanville (the "city"), which you represent, received a request for all data related to each red light violation stored on the city's behalf by Redflex Traffic Systems ("Redflex").¹ You claim that portions of the requested information are excepted from disclosure under section 552.130 of the Government Code. In addition, you state the requested information may implicate the proprietary interests of Redflex. Accordingly, you inform us you have notified Redflex of the request and of its right to submit comments to this office as to why the requested information should not be released to the requestor. *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). The city has forwarded comments from Redflex pertaining to the requested information. We have also received comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, Redflex asserts the requested information is not maintained in the format specified by the requestor and to provide the responsive information in the format requested would require the creation of a new data file. Redflex also states it does not have some of the categories of red light camera data requested. The Act does not require a governmental body to make available information that did not exist when the request was received, nor does it require a governmental body to compile information or prepare new information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Likewise, a governmental body is not required to produce the responsive information in the format requested or create new information to respond to the request for information. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. See Open Records Decision No. 561 at 8-9 (1990). Accordingly, the city must make a good faith effort to comply with the instant request.

Next, Redflex contends the requested information is excepted from disclosure pursuant to the terms and conditions of a contract it has with 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 requested 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

²We assume that 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.

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 requested information would 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 requested information, apart from any contract Redflex may have entered into, contains or consists of commercial or financial information, the release of which would cause the company substantial competitive harm. Therefore, no portion of the requested information is excepted under section 552.110(b).

The city claims a portion of the requested information is excepted from disclosure under section 552.130 of the Government Code, which provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;

(2) a motor vehicle title or registration issued by an agency of this state or another state or country; or

(3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The city argues that the information it has highlighted must be withheld under section 552.130(a). However, the requestor contends he has a right of access to the information at issue under section 730.007(a)(2)(E) of the Transportation Code. *See* Gov't Code § 552.130(b); Transp. Code § 730.007(a)(2)(E) (personal information obtained in connection with motor vehicle record may be disclosed for use in research or in producing statistical reports, but only if the personal information is not published, redisclosed, or used to contact any individual). We note that chapter 730 is applicable to an "agency . . . that compiles or maintains motor vehicle records." Transp. Code § 730.003(1). The city is not an agency as defined by section 730.003(1). Therefore, chapter 730 does not apply to the city. Accordingly, we conclude that the requestor does not have a right of access to this information pursuant to section 730.007(a)(2)(E) of the Transportation Code. Thus, the city must withhold the information we have marked under section 552.130 of the Government

Code.³ However, the remaining information the city has highlighted does not consist of motor vehicle record information, and it may not be withheld under section 552.130. As no further exceptions to disclosure are raised, the remaining requested information must be released 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 423911

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John M. Jacobs
RedFlex Traffic Systems
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Phoenix, Arizona 85085
(w/o enclosures)

³We note this office 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 under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.