



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2012

Ms. Elizabeth L. White
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2012-03446

Dear Ms. White:

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# 447335 (File No. 3607-1; #11-421 PIR).

The City of League City (the "city"), which you represent, received a request for correspondence between Redflex Traffic Systems, Inc. ("Redflex") and the mayor, any city council member, and any city employee or representative during a specified time period. You state there is no responsive correspondence between Redflex and the mayor or any council member.¹ You contend portions of the submitted records are not public information subject to disclosure under the Act. You inform us the city will withhold a social security number pursuant to section 552.147 of the Government Code.² You claim some of the remaining information at issue is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. You also believe the remaining information at issue may implicate the proprietary interests of Redflex. You inform us Redflex was notified of the present request for information and of its right to submit arguments to this office as to

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

why the remaining information should not be released.³ We received correspondence from an attorney for Redflex. We have considered all the submitted arguments and reviewed the information you submitted.⁴ We also have considered the comments we received from the requestor.⁵

Initially, we address the submitted information you contend is not subject to the Act. The Act is applicable to “public information,” which 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). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information that is made public under section 552.021 of the Government Code. *See* ORD 581 at 6 (construing predecessor to Act). Having reviewed the information you contend is not subject to the Act, we agree the computer codes and the password you have marked are not public information for purposes of section 552.002 and thus are not subject to disclosure under the Act. *See* Gov’t Code § 552.021. Therefore, the marked computer codes and the password need not be released in response to the present request for information.

Next, we note an interested third party is allowed ten business days from the date of its receipt of the governmental body’s notice under section 552.305 of the Government Code to submit its reasons, if any, why information relating to the party should not be released. *See id.* § 552.305(d)(2)(B). Although Redflex initially notified this office through its attorney that the company might be submitting arguments under section 552.110 of the

³*See* Gov’t Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov’t Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

⁴This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

⁵*See* Gov’t Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Government Code, we have received no further correspondence from Redflex or its attorney. Thus, as Redflex has not demonstrated any of the remaining information at issue is proprietary for purposes of the Act, the city may not withhold any of the remaining information on the basis of any interest Redflex may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

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. You claim section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *See id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has concluded other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You have marked the information you contend is private. Having reviewed the information at issue, we conclude the information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We conclude the remaining information you have marked is not highly intimate or embarrassing and a matter of no legitimate public interest. Thus, the remaining information may not be withheld on privacy grounds under section 552.101.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130(a)(2). You indicate the city will redact the Texas license plate numbers you have marked, which are confidential under section 552.130(a)(2) of the Government Code, pursuant to the previous determination issued under section 552.130 in Open Records Decision No. 684 (2009).⁶ We have marked other motor vehicle information the city also must withhold under section 552.130 of the Government Code.

In summary, the city (1) need not release the computer codes and the password you have marked, which are not public information subject to disclosure under the Act; (2) must

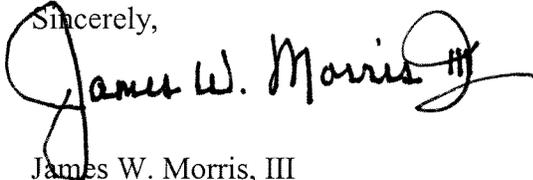
⁶Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas license plate number under section 552.130 of the Government Code.

withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) must withhold the Texas license plate numbers you have marked and the additional motor vehicle information we have marked under section 552.130 of the Government Code. The rest of the submitted 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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, stylized initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 447335

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)