



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 28, 2013

Ms. Lisa D. Mares  
Counsel for the City of Southlake  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2013-08786

Dear Ms. Mares:

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# 488453 (OR 2013-38).

The City of Southlake (the "city"), which you represent, received a request for fifteen categories of information related to the red light enforcement program, a specified city ordinance, and a specified notice number issued to the requestor. You state some of the responsive information has been released to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of Redflex Traffic Solutions ("Redflex"). Accordingly, you notified Redflex of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). Thus, we have

considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address the requestor's argument the city failed to comply with the Act's procedural requirements under section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See id.* § 552.301(b). You state the city received the request for information from the requestor on February 12, 2013. We understand the city sought clarification of portions of the request from the requestor on February 26, 2013, and the requestor responded to this request for clarification on March 6, 2013. *See id.* § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request). We have no indication the city did not act in good faith in seeking clarification of the request. Accordingly, based on the submitted documentation, the city's ten-business-day period under section 552.301(b) commenced on March 6, 2013, the date of the city's receipt of the requestor's response to the request for clarification. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed). Consequently, the city's ten-business-day deadline was March 20, 2013. We note the city's request for a ruling was submitted in an envelope meter-marked on March 21, 2013. *See Gov't Code* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city has failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). We note section 552.108 of the Government Code is discretionary in nature. This exception serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of

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<sup>1</sup>We 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 those records contain substantially different types of information than those submitted to this office.

section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted information may be withheld under section 552.108. However, because section 552.101 can provide a compelling reason for non-disclosure, we will consider the applicability of this exception to the submitted information. In addition, because the interests of a third party are at stake, we will consider whether the requested information must be withheld to protect the interests of Redflex.

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. 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 record that pertains to motor vehicle operator’s or driver’s license or permit, motor vehicle registration, motor vehicle title, or identification document issued by 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.
- (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 Redflex to provide support for its red light camera enforcement program. You explain 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 individual, organization, or entity other than this state or agency of this state). Accordingly, we find 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 private entity acting on behalf of government agency in carrying out agency’s functions).

The submitted information consists of a print-out of photo-enforcement rejected incidents. You state this information includes the names and addresses of the owners of Texas registered vehicles, which were obtained by Redflex. We have marked the name and address information, excluding zip codes, in the submitted information. We understand this information is in the identical or substantially identical format that it was received in 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 the personal information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 730.013(a) of the Transportation Code.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov’t Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Redflex. Thus, Redflex has failed to demonstrate it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)–(b); Open Records Decision Nos. 661 at 5–6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the remaining information on the basis of any proprietary interest Redflex may have in the information.

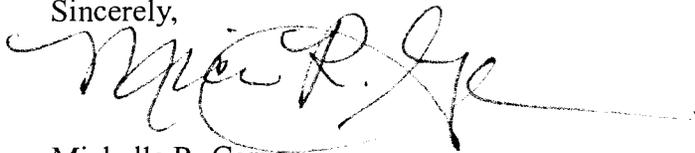
Although you argue some of the remaining information is excepted from disclosure pursuant to federal copyright law, we note copyright law does not make information confidential. *See* Open Records Decision No. 660 at 5 (1999). A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the personal information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 730.013(a) of the Transportation Code. The remaining information must be released; however, any information protected by copyright may only be released in accordance with copyright law.

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](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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/dls

Ref: ID# 488453

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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