



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 14, 2014

Mr. Todd Stephens  
Assistant City Attorney  
City of Odessa  
P.O. Box 4398  
Odessa, Texas 79760-4398

OR2014-02876

Dear Mr. Stephens:

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# 515811.

The City of Odessa (the "city") received a request for specified information, including communications between city employees and officials with American Traffic Solutions ("ATS"). The city states it has provided or will provide some of the requested information to the requestor. The city does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the city states, and provides documentation showing, it notified ATS of the city's receipt of the request for information and of ATS's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). In correspondence to this office, ATS asserts the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have reviewed the submitted arguments and information. We have also considered

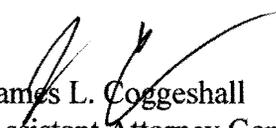
comments submitted by the requestor.<sup>1</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

ATS argues the submitted information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure information that, if released, would give an advantage to a competitor or bidder. *Id.* § 552.104. However, section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). The city did not assert section 552.104. Therefore, the city may not withhold any of the information at issue pursuant to that section. *See* ORD 592 (governmental body may waive section 552.104). As no further arguments are made to withhold the information at issue, the city must release the submitted information 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

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<sup>1</sup>Although the requestor asserts the city failed to comply with section 552.305(d)(1) in notifying ATS, we note a violation of section 552.305 does not result in the legal presumption that the requested information is public under section 552.302 of the Government Code.

Ref: ID# 515811

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Amy Rasor  
Deputy General Counsel  
American Traffic Solutions, Inc.  
1330 West Southern Avenue  
Tempe, Arizona 85282  
(w/o enclosures)