



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2014

Mr. Zachariah T. Evans
Counsel for the City of Balch Springs
Akers Law Firm, LLP
Building E, Suite 102
6618 Sitio Del Rio Boulevard
Austin, Texas 78730

OR2014-06418

Dear Mr. Evans:

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# 520089.

The City of Balch Springs (the "city"), which you represent, received a request for (1) the most recent contract between the city and an outside vendor for red light camera photo/video, (2) any correspondence between any city employees and any employees of RedFlex Traffic Systems, Inc. ("RedFlex"), (3) any correspondence between any city employees and any of four named persons, and (4) any e-mails between a city e-mail address and an e-mail address at redflex.com. You inform us you have released some of the requested information to the requestor. Although you take no position on the public availability of the submitted information, you state the release of the submitted information may implicate the proprietary interests of a third party. Accordingly, you inform us, and provide documentation showing, you notified RedFlex of the request and of the company's right to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); *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 to disclosure under the Act in certain circumstances). We have reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). You inform us the city received the request for information on January 28, 2014. You do not inform us the city was closed for business on any day between January 28, 2014, and February 11, 2014. Accordingly, the city's ten-business-day deadline was February 11, 2014. However, the envelope in which the city submitted its request for a ruling to this office was received by this office on February 13, 2014, and does not bear a postmark. *See id.* § 552.308(a)(1) (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 failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

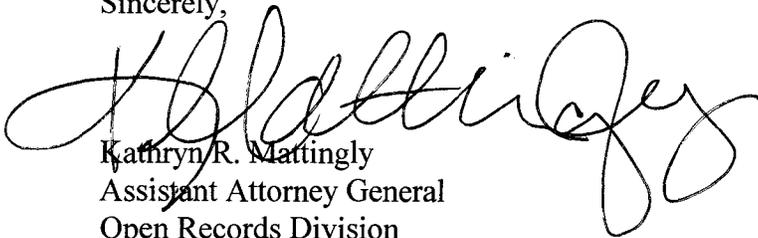
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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 (Tex. App.—Austin 1990, no writ); *see also* 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. Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider whether any of the responsive information may be excepted under the Act.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from RedFlex on why the company's submitted information should not be released. Therefore, we have no basis to conclude RedFlex has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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, release of requested information would cause party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest RedFlex may have in it. As no exceptions to disclosure have been raised, 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.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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 520089

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jaron L. Hudgins, Esq.
Beatty Bangle Strama P.C.
400 West 15th Street, Suite 1450
Austin, Texas 78701
(w/o enclosures)