ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2007

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
Box 90231
Arlington, Texas 76004-3231

OR2007-03022

Dear Ms. Shortall:

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# 273794.

The City of Arlington (the "city") received a request for "the proposals submitted in response to RFP #06-0149 for Digital Red Light Photo Enforcement Program, August 8, 2006," as well as the "scoring/evaluation criteria and any contract(s) resulting from this RFP solicitation." You state that you have release some of the requested information to the requestor. As to the remaining requested information you make no arguments and take no position as to whether it is excepted from disclosure. You, instead, indicate that the submitted information may be subject to third party proprietary interests. Pursuant to section 552.305 of the Government Code, you have notified American Traffic Solutions, Inc. ("American"), Traffipax, Inc. ("Traffipax"), and RedFlex Traffic Systems, Inc. ("RedFlex"), of the request and of each company's right to submit arguments to this office as to why the information should not be released. *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). We have reviewed the submitted information.

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) to submit its reasons, if any, as to why

requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from American, Traffipax, or RedFlex explaining how the release of the submitted information will affect their proprietary interests. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of American, Traffipax, or RedFlex. *See, e.g.,* Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Thus, none of the submitted information may be withheld based on the proprietary interest of American, Traffipax, or RedFlex.

However, we note that some of the materials at issue are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, 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. *See* Open Records Decision No. 550 (1990). Accordingly, the city must release the submitted information, but any copyrighted information may only be released in accordance with copyright law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

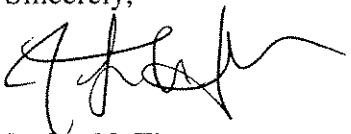
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 273794

Enc. Submitted documents

c: Ms. June Holaday
Marketing Coordinator
Nestor Traffic Systems
42 Oriental Street
Providence, Rhode Island 02908
(w/o enclosures)

Mr. James Tuton
American Traffic Solutions, Inc.
14861 North Scottsdale Road, Suite 109
Scottsdale, Arizona 85254
(w/o enclosures)

Mr. Allen Shutt
President
Traffipax, Inc.
514 Progress Drive, Suite E
Linthicum, Maryland 21090
(w/o enclosures)

Mr. Mark Etzback
Regional Sales Director
RedFlex Traffic Systems, Inc.
302 Prospect Street
Alton, Illinois 62002
(w/o enclosures)