



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2011

Mr. Stephen R. Alcorn  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-8030

OR2011-05433

Dear Mr. Alcorn:

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# 414972.

The City of Grand Prairie (the "city") received a request for "an electronic dump of all [city] data concerning individual automated red light camera violations." We understand you to claim the requested information is not subject to the Act. In addition, you state the requested information may implicate the proprietary interests of a third party. Accordingly, you inform us you have notified Redflex Traffic Systems ("Redflex") of the request and of its right to submit comments to this office as to why the requested information should not be released to the requestor. *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 received comments from Redflex. We have also received comments from the requestor. Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments.

Both the city and Redflex state the responsive information is held by Redflex, a private entity. Because the city's contract with Redflex does not permit an unlimited right of access to the responsive information, both the city and Redflex argue the information is not "public information" subject to the Act. Section 552.002 of the Act provides "public information"

subject to the Act 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.

*Id.* § 552.002(a). Whether information prepared by a private party on behalf of a governmental body is in the physical custody of a governmental body is not determinative of whether the information is subject to the Act. *See, e.g.*, Open Records Decision Nos. 558 (1990), 499 (1988), 462 (1987). The test for whether the Act applies to information held by outside parties is whether: (1) the information relates to the governmental body's official duties or business; (2) the consultant acts as agent of the governmental body in collecting the information; and (3) the governmental body has or is entitled to access to the information. ORDs 499 at 2, 462 at 4. In Open Records Decision No. 518 (1989), this office determined that "if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to [the Act]." ORD 518 at 2-3; *see* Open Records Decision Nos. 445 (1986), 437 (1986), 317 (1982). Pursuant to its contract with the city, Redflex sets up cameras that monitor certain traffic intersections and railroad crossings throughout the city for traffic violations. Redflex creates and collects violations data and provides this information to personnel in the city's police department who determine whether a citation should be issued. If the personnel in the city's police department decide a citation is appropriate, Redflex issues a citation to the appropriate vehicle owner by utilizing data obtained through a contractual relationship with the National Law Enforcement Telecommunications System, Inc. ("NLETS"). We find the detection and citation of individuals for violations of the city's traffic laws, which are services Redflex provides pursuant to its contract with the city, are law enforcement activities traditionally carried out by governmental bodies. Thus, in performing these law enforcement functions, Redflex is providing services that would otherwise be undertaken by the city as part of its official duty of law enforcement. Accordingly, we conclude the responsive information is collected and maintained by Redflex as an agent for the city and in connection with the city's official business.

We next consider whether the city owns or has a right of access to the responsive information. Open Records Decision No. 492 (1988) concerned a similar request for information that was held in a private third party's computers and which was available to the governmental body pursuant to contract and only through telephone link access. In that ruling, we determined any information on the third party's system that was actually accessed and used by the governmental body had been provided to the governmental body "just as if the information was provided . . . in hard copy." ORD 492 at 3. Thus, any information the governmental body could access through the telephone link was "public information" subject

to the Act. In this instance, the contract between the city and Redflex provides the city with the right to remotely connect to Redflex's system and review the violations data for the purpose of determining whether a citation should be issued. In fact, because citations for violations of the city's laws must be authorized by the city, this right of the city to review the violations data collected by Redflex is essential to the performance of the city's duty of law enforcement. Additionally, we presume such violations data would be provided to the city in connection with its prosecution of the citations issued on the basis of violations detected by Redflex systems. Therefore, we find the city's contractual right to review the violations data in connection with its duty of law enforcement is sufficient to establish the city's right of access to the responsive information for purposes of section 552.002. Thus, we conclude the responsive information is "public information" subject to the Act.

Next, the city and Redflex assert the responsive information is not maintained in the format specified by the requestor and to provide the responsive information in the format requested would require the creation of a new data file. The Act does not require a governmental body to make available information that did not exist when the request was received, nor does it require a governmental body to compile information or prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Likewise, a governmental body is not required to produce the responsive information in the format requested or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Accordingly, the city must make a good faith effort to comply with the instant request.

Next, Redflex contends the responsive information is excepted from disclosure pursuant to the terms and conditions of a contract it has with NLETS. However, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. We understand Redflex to assert the responsive information is made confidential

under section 552.101 in conjunction with chapter 730 of the Transportation Code. Section 730.004 of the Transportation Code provides:

Notwithstanding any other provisions of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005-730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

*Id.* § 730.004. Section 730.003 provides, for purposes of chapter 730 of the Transportation Code:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

*Id.* § 730.003(1), (4). Section 730.004 only applies to an "agency . . . or an authorized . . . contractor of an agency" that compiles or maintains motor vehicle records. *See id.* § 730.003(1). Redflex, as an authorized contractor of the city, has failed to demonstrate it compiles or maintains motor vehicle records. Therefore, section 730.004 does not apply to Redflex. Accordingly, no part of the responsive information may be withheld under section 552.101 in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Redflex also raises section 552.110(b) for the responsive information. Section 552.110(b) of the Government Code protects the proprietary interests of private parties with respect to "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that

substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Redflex claims release of the responsive information would cause it substantial competitive harm because such release could be considered a violation of the company's contract with NLETS. However, Redflex does not provide any arguments explaining how the responsive information, apart from any contract Redflex may have entered into, contains or consists of commercial or financial information the release of which would cause the company substantial competitive harm. Therefore, no portion of the responsive information is excepted under section 552.110(b).

Redflex's arguments indicate the responsive information may contain Texas motor vehicle record information that it receives from NLETS. We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. ORD 684. Therefore, with the exception of any information the city may be authorized to withhold pursuant to Open Records Decision No. 684, the city must release the responsive information in its entirety 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.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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/eeg

Ref: ID# 414972

c: Requestor

Mr. Robert G. Salcido  
Redflex Traffic Systems, Inc.  
23751 North 23<sup>rd</sup> Avenue, Suite 150  
Phoenix, Arizona 85085