



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 16, 2018

Mr. Thomas Royce Hansen  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102-6311

OR2018-03794

Dear Mr. Hansen:

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# 696138 (COFW Req. Nos. W0066427, W066450, and W067645).

The City of Fort Worth (the "city") received three requests from the same requestor for information pertaining to red light camera citations during specified time periods. The city informs us it will release some information to the requestor upon payment of a cost estimate.<sup>1</sup> The city indicates it will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>2</sup> The city claims some of the requested information is not subject to the Act. Further, the city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>3</sup> Additionally, the city states release of the requested information may implicate the

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<sup>1</sup>The city states it is sending the requestor an estimate of charges for W0066427 pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615.

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>3</sup>We note, and the city acknowledges, the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, as section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

proprietary interests of American Traffic Solutions (“ATS”). Accordingly, the city states, and provides documentation showing, it notified ATS of the request for information and of its 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 (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). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>4</sup>

Initially, the city argues it does not maintain some information that may be responsive to the request. The Act is applicable to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) defines “public information” as:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). Thus, virtually all information in a governmental body’s physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes

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<sup>4</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 that submitted to this office.

public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Additionally, information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov't Code § 552.002(a-1).

The city explains its “red-light camera program is operated by ATS under contract with the [c]ity.” Although the city claims “[t]he language in the contract indicates that ATS maintains additional raw data – e.g. rejected images – to which the [c]ity does not have an explicit contractual right of access but that could be responsive to the current requests,” we note this information, “rejected images,” was produced by ATS pursuant to its contract with the city.<sup>5</sup> Accordingly, we find the city spent or contributed public money for the purpose of producing, collecting, assembling, or maintaining this information, and further, that the information relates to the transaction of official city business. Therefore, to the extent ATS maintains raw data in the form of rejected images, we conclude this information constitutes public information for purposes of section 552.002 of the Government Code, and the city must release this information unless it is excepted from disclosure under the Act.

We must now address the city's obligations under the Act with respect to the requested information it did not submit. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to subsection 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The city received the request at issue on October 25, 2017. However, as of the date of this letter, the city has not submitted a copy of the remaining information requested or a representative sample for our review. Consequently, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd.*

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<sup>5</sup>We note the city's contract with ATS specifies that ATS is to provide to the city monthly reports and/or access to certain information, to include “[t]he total number and percentage of rejected images by reason.”

*of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although the city states it notified ATS so the company could make arguments against release of the information at issue, as of the date of this letter, we have not received any arguments from ATS explaining how release of any of the requested information would affect its proprietary interests. See Gov't Code §§ 552.101, 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, that release of requested information would cause that party substantial competitive harm). Further, although the city raises an exception to disclosure, because it has not submitted the remaining requested information for our review, we have no basis for finding any of the remaining requested information excepted from disclosure. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302. If the city believes the information may not lawfully be released, it must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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 information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As previously noted, as of the date of this letter, we have not received comments from ATS explaining why the requested information should not be released. Accordingly, we have no basis to conclude ATS has a protected proprietary interest in the requested information, and the city may not withhold any portion of it on that basis. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6, 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, 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 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). For the purposes of chapter 730 of the Transportation Code, section 730.013 provides, in part:

- (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.

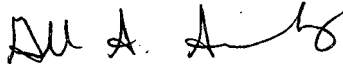
*Id.* § 730.013(a)-(b). As previously noted, the city states it contracts with ATS to operate red-light cameras at intersections in the city. The city informs us ATS uses these cameras to photograph the license plates of vehicles that illegally proceed through those intersections. The city further informs us ATS then uses the license plate numbers of Texas registered vehicles to obtain additional motor vehicle record information from the Texas Department of Motor Vehicles (the “DMV”). We note the DMV is an agency under section 730.003(1) that obtains or compiles motor vehicle records. *See id.* § 730.003(1). We further note the names and addresses, but not the zip codes, of the owners of Texas registered vehicles obtained by ATS from the DMV are considered personal information under section 730.003(6). *See id.* § 730.003(6) (personal information means information that identifies a person, including an individual’s photograph or computerized image, social security number, driver identification number, name, and address, but not zip code, telephone number, or medical or disability information). Accordingly, we find ATS, by obtaining information from the DMV to assist the city in carrying out its functions, is an authorized recipient of personal information for purposes of section 730.013. *See id.* § 730.007(a)(2)(A)(ii) (authorized recipient includes a private entity acting on behalf of a government agency in carrying out the agency’s functions). Because the personal information of owners of Texas registered vehicles was obtained from the DMV by an authorized recipient, and because this information is in the identical or substantially identical format that it was received by ATS from the DMV, the personal information of owners of Texas registered vehicles is confidential under section 730.013(a) of the Transportation Code. We have no indication release of the information at issue would be for a use permitted under section 730.007. Therefore, with the exception of the information we have marked for release, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 730.013(a) of the Transportation Code. However, we find the information we have marked for release does not consist of personal information for the purposes of chapter 730 and, therefore, this information may not be withheld under section 552.101 of the Government Code on the basis of sections 730.004 and 730.013 of the Transportation Code. The city must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first name "Gerald" being the most prominent.

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/tdw

Ref: ID# 696138

Enc. Submitted documents

c: Requestor  
(w/o enclosures)