



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 27, 2007

Ms. Heather Silver  
Assistant City Attorney  
City of Dallas  
1500 Marilla Street, Room 7BN  
Dallas, Texas 75201

OR2007-15509

Dear Ms. Silver:

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# 295465.

The City of Dallas (the "city") received a request for six categories of information related to red light cameras, including an electronic database showing all citations issued by photo enforcement of red light cameras.<sup>1</sup> You state that the city has released most of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup> We have also received and considered

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<sup>1</sup>We note that the city asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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

Initially, you acknowledge, and we agree, that the city failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(a), (b). 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 the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because sections 552.101 and 552.130 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

Next, we address the requestor's contention that the city previously released portions of the requested information to third parties. We note that section 552.007 of the Government Code prohibits selective disclosure of information. Thus, a governmental body cannot withhold information from a requestor that it has voluntarily made available to another member of the public unless the information is confidential by law. *See* Gov't Code § 552.007(b). As a general rule, if a governmental body releases information to one member of the public, the Act's exceptions to disclosure are waived unless the information is deemed confidential under the Act. Open Records Decision Nos. 490 (1988), 400 (1983). Although protection for information covered by the Act's permissive exceptions, such as sections 552.103 and 552.108 can be waived, protection for information deemed confidential by law ordinarily is not waived though "selective disclosure." *See* ORD Nos. 490, 400.

We note that the requestor informs us that he has narrowed his request to exclude vehicle identification numbers, license plate numbers, driver's license numbers, and social security numbers. Accordingly, any of this information within the submitted documents is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request. Thus, the only responsive information contained in the submitted information is the vehicle owner name and the state of registration.<sup>3</sup> We address your arguments with regard to the submitted responsive information.

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<sup>3</sup>The requestor informs us that "[a]t issue still is the release of the vehicle owner name, thus the name of the municipal ordinance violator shown on each citation issued and the state in which the violating vehicle is registered."

Section 552.101 of the Government Code 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 730.013, which provides that for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or re-disclose the personal information in the identical or a substantially identical format the personal information [sic] 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.

(c) Any authorized recipient who resells or rediscloses personal information obtained from an agency shall be required by that agency to:

(1) maintain for a period of not less than five years records as to any person or entity receiving that information and the permitted use for which it was obtained; and

(2) provide copies of those records to the agency on request.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$25,000.

Transp. Code § 730.013. You state that the city contracts with a third party, ACS State and Local Solutions, Inc. (“ACS”), to “provide hosting and associated services to support the outsourcing of the operations and maintenance of computer applications forming a red light camera enforcement hosted system.” The submitted contract requires that ACS obtain license plate numbers, which are captured by red light cameras, of vehicles that proceed through intersections against the light. The contract requires that ACS then use the license plate numbers to obtain additional motor vehicle record information from the Texas Department of Transportation (“TXDOT”) or, as we understand, the equivalent agency in another state. We note that TXDOT is an agency under section 730.003(1) that obtains or compiles motor vehicle records. We further note that the names of the owners of Texas registered vehicles obtained by ACS from TXDOT 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, address, but not the zip code, telephone number, and medical or disability information). Accordingly, we find that, by obtaining motor vehicle information from TXDOT to assist the city in carrying out its functions, ACS

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).

Based upon your representations and our review of the information at issue, we conclude that, because the names of owners of Texas registered vehicles were obtained from TXDOT by an authorized recipient, and because this information in this case would be redisclosed in the identical or substantially identical format that it was received by ACS from TXDOT, the names of owners of Texas registered vehicles are confidential under section 730.013(a) of the Transportation Code. Accordingly, as we have no indication that release of this information would be for a use permitted under section 730.007, we conclude that these owners' names must be withheld under section 552.101 of the Government Code.<sup>4</sup> However, we note that section 730.013 makes confidential only the names of individuals whose vehicles are registered in the state of Texas. The remaining responsive information, consisting of the state of registration, whether in Texas or other states, and the names of the owners of vehicles registered in states other than Texas, does not consist of personal information for the purposes of section 730.003(6). Therefore, this information may not be withheld under section 552.101 in conjunction with section 730.013(a).

However, we note that section 552.101 also encompasses federal law, including section 2721 of title 18 of the United States Code, which prohibits the release and use of certain personal information from State motor vehicle records. Section 2721 provides in pertinent part:

(a) In general – A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)) . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

*See* 18 U.S.C. § 2721(a), (c). We note that the remaining names, consisting of the names of the owners of vehicles registered in states other than Texas, are considered personal information for purposes of section 2725(3). *See id.* § 2725(3) (personal information means information that identifies a person, including an individual's photograph, social security number, driver identification number, name, address, but not the 5-digit zip code, telephone number, and medical or disability information). As noted, the contract between the city and ACS requires that ACS use the license plate numbers obtained from the red light cameras to procure additional motor vehicle record information from TXDOT or, as we understand, the equivalent agency in another state. Based on this representation, we conclude that, by obtaining motor vehicle information from other state agencies to assist the city in carrying out its functions, ACS is an authorized recipient of personal information for purposes of section 2721(c). *See id.* § 2721(b)(1) (providing that personal information may be disclosed by a state department of motor vehicles to any entity acting on behalf of a Federal, State, or local agency in carrying out its functions). Therefore, because the remaining names were obtained from a state department of motor vehicles by an authorized recipient, these names are confidential under federal law. As we have no indication that release of this information would be for a use permitted under section 2721(b), we conclude the remaining names must be withheld under section 552.101 of the Government Code in conjunction with section 2721(c) of title 18 of the United States Code. We note, however, that the state of registration itself is not confidential under federal law.

Finally, we also understand you to argue that the submitted information identifying a vehicle as being registered in Texas is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that is related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We conclude that section 552.130 does not apply to the submitted information identifying a vehicle as being registered in Texas.

In summary, in connection with section 552.101 of the Government Code, the city must withhold (1) the names of owners of vehicles registered in Texas under section 730.013 of the Transportation Code and (2) the names of owners of vehicles registered in other states

under section 2721 of title 18 of the United States Code. The remaining responsive information, consisting of the state of registration of the vehicle, must be released to the requestor.

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).

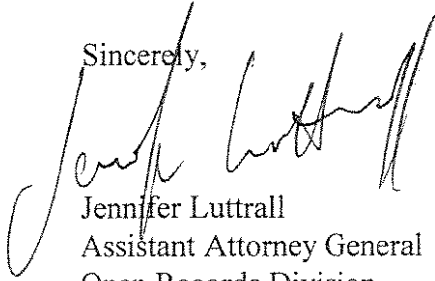
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'Jennifer Luttrall', is written over the typed name and title.

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 295465

Enc. Submitted documents

c: Mr. Joe Ellis  
KDFW  
400 North Griffin  
Dallas, Texas 75202  
(w/o enclosures)