

February 10, 2011

Honorable Greg Abbott  
Attorney General  
Open Records Division  
PO Box 12548  
Austin, TX 78711-2548

Re: Grand Prairie, TX request for TAG decision on Aren Cambre's open records request on red light camera (attached)

General Abbott:

On February 9, Stephen R. Alcorn, Assistant City Attorney for Grand Prairie, mailed you a letter (exhibit A) asking for an Attorney General decision on an open records request (exhibit B). I am submitting this comment as the open records requestor.

A summary of my request (exhibit B) is I requested broad information, in electronic form, on each red light violation recorded by the city's red light enforcement program. The language of my request suggested, but did not specify, a way in which the data may be produced.

With this letter, I am making four points: the requested data is subject to the Texas Public Information Act, the data is disclosable to me, disclosure would not cause competitive harm, and I am not requesting a custom report.

### **Point 1: These are government records subject to TPIA**

Grand Prairie's letter states, "The City never has access to or control of the information requested by the requestor." With this, the City implies that, because they have outsourced management of the data, it is not subject to the Texas Public Information Act.

This novel idea would suggest that jurisdictions may frustrate disclosure of data on their programs simply by outsourcing the management or collection of this data. If the Office of the Attorney General were to allow this interpretation, it would create a gigantic loophole in open records law.

Grand Prairie's automated red light enforcement program is unmistakably a city program. As such, its data is subject to the Texas Public Information Act.

### **Point 2: Confidential data is in fact disclosable to me**

Redflex and Grand Prairie are incorrect in their reasoning to withhold confidential information.

Texas Transportation Code Section 730.007 states that normally confidential information “may be disclosed to any requestor by an agency if the requestor ... (2) represents that the use of the personal information will be strictly limited to ... (E) use in research or in producing statistical reports, but only if the personal information is not published, redisclosed, or used to contact any individual.” Grand Prairie acknowledged I am a “graduate student” in the first sentence of its letter. I am a doctorate student at Southern Methodist University, and use of any confidential data will be in full compliance with this law. Any sensitive data will be permanently deleted once research activities have concluded.

Texas Government Code Section 552.130 normally excludes motor vehicle records in subsection (a). These records include but are not limited to “motor vehicle operator's or driver's license” and “motor vehicle title or registration” (license plate number). However, subsection (b) permits disclosure to me: “Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730 Transportation Code.”

Applicable federal law is in Drivers Privacy Protection Act (18 U.S.C. § 2721). While it also normally prohibits disclosure, subsection (b)(5) permits disclosure in an almost identical way to the Texas law: it allows disclosure “[f]or use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.”

By citing an NLETS agreement, Redflex and Grand Prairie absurdly suggest that a contractual agreement would trump statute.

### **Point 3: The request does not include data where disclosure would cause competitive harm**

I have neither requested nor desire proprietary data. Rather, I am requesting the facts that Grand Prairie’s traffic enforcement systems observe.

These facts are virtually identical to what a law enforcement officer would record when issuing a citation or what a judicial system would record while adjudicating a violation. (Note carefully that I am not alleging these are judicial records. As per Grand Prairie’s letter, these are administrative matters and do not become judicial records unless they are appealed to municipal court.) The main difference is that some details are more precise. For example, an officer might simply note that a motorist ran a red light, whereas an automated system will record that a vehicle entered the intersection 1.3 seconds after the red light turned on.

Therefore, Redflex’s contention that releasing the data would cause competitive harm is without merit.

### **Point 4: I am not requesting a custom report**

Nowhere do I request a custom report. In my request, I say I am open to receiving straight, raw copies of database tables. This is normally a very simple process for information technology employees. It is

Redflex, not me, who is alleging the need to do extra work to comply with their own perceived, and likely incorrect, theories on data confidentiality and proprietary data.

I appreciate your consideration of this letter. Please do not hesitate to contact me with any questions.

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