



Jo Ann Pate
Assistant City Attorney

Phone (817) 392-6259
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October 7, 2016

Sandoval Custom Creations, Inc.
2094 Quartz Mountain Drive
P O Box 155
Larkspur, Colorado 80118

via electronic mail: shaun@sccicovert.com

Re: City of Fort Worth Public Information Request No. W055275 from Isaiah X. Smith
Request for All City of Fort Worth Records Pertaining to Cell Site Simulators and Other
Related Records

Dear Shaun:

On September 16, 2016, the City of Fort Worth (the "City") received a written request from Isaiah X. Smith (the "requestor") as referenced above. A copy of the request is attached.

The requested files include records from your organization. The Attorney General's Office is reviewing this matter and they will issue a decision on whether Texas law requires us to release your papers. Generally, Texas law requires that the City release all requested information, but there are exceptions. As described below, you have the right to object to the release of the requested information by submitting a written brief to the Attorney General's Office and arguing that one or more exceptions apply to your information. If you want to submit your objections and a brief to the Attorney General's Office, you must do so immediately. If the Attorney General's Office does not receive your objections and briefing within 10 business days, it may conclude that no exception applies and direct the City to release your information.

The requested information at issue may be excepted from disclosure under portions of the Texas Government Code (the Texas Public Information Act (the "Act")). Pursuant to section 552.301 of the Government Code, the City has sought an opinion from the Attorney General's Office to determine whether the City must release the requested information. The City has submitted to the Attorney General a copy of the request for information and a copy of the requested information along with other material required by the Act.

Under the Act, all information held by governmental bodies is open to public disclosure unless it falls within one of the Act's specific exceptions to disclosure. The Act places on the custodian of records the burden of demonstrating that the records are excepted from public disclosure. Attorney General Opinion H-436 (1974). However, in cases such as this one, where a third party's interest is implicated, the governmental body may rely on the third party to

OFFICE OF THE CITY ATTORNEY

The City of Fort Worth ★ 1000 Throckmorton Street ★ Fort Worth, Texas 76102
817-392-7600 ★ Fax 817-392-8359

establish that the information should be withheld under applicable exceptions intended to protect those interests. Gov't Code § 552.305; Open Records Decision No. 542 (1990).

If you wish to claim that the requested information is confidential information, you have the right to submit additional information or a legal briefing to the Attorney General. You are not required to submit a briefing to the Attorney General, but if you decide not to submit a briefing, the Office of the Attorney General may presume that you have no privacy interest in the requested information. In other words, your failure to take timely action may result in the requested information being released to the public. If you decide to submit a briefing, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit briefing to the Attorney General, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and;
- c) explain why each exception applies. Gov't Code § 552.305(d).

A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436. You may contact this office to review the information at issue in order to make your arguments. The Act does not require the Attorney General to raise and consider exceptions that have not been raised. The Attorney General is generally required to issue a decision within 45 working days. You must send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e). Please also provide the City with a copy of your communication with the Attorney General.

Commonly Raised Exceptions:

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may

result in the release of requested information. We have listed some commonly-claimed exceptions in the Government Code concerning privacy information and cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.110: Trade Secrets and Commercial or Financial Information

Trade Secrets:

In re Bass, 113 S.W.3d 735 (Tex. 2003).

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

Commercial or Financial Information:

The commercial or financial information prong of section 552.110 was amended by the Seventy-sixth Legislature. The amendment became effective September 1, 1999. At the time of publication of this form, there were no cases or opinions construing the amended provision.

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App.--Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W. 3d 735 (Tex. 2003).

National Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).

Open Records Decision No. 639 (1996).

Section 552.131: Economic Development Negotiation Information

Other Possible Exceptions:

Sections 418.176 through 418.182 of the Government Code, part of the Texas Homeland Security Act, make confidential certain information related to terrorism or related criminal activity.

If you have questions about this notice or release of information under the Act, please refer to the Public Information Handbook published by the Office of the Attorney General, or

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contact the Attorney General's Open Government Hotline at 512-478-OPEN (6736) or toll-free at (877)-673-6839 (877-OPEN TEX). To obtain copies of the Public Information Handbook or Attorney General Opinions, please go to the Attorney General's website at www.oag.state.tx.us or call the Attorney General's Opinions Library at 512- 936-1730.

Sincerely,

Jo Ann Pate
Assistant City Attorney

Attachment

Copies to:

Honorable Ken Paxton
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Mr. Isaiah X. Smith
Isaiah Smith Campaign
P O Box 163411
Fort Worth, Texas 76161

via electronic mail: iscampaign@usa.com

Certified Mail No.: 7015 1520 0002 8614 8837

Public Information

Subject: FW: Open Records Request
Attachments: SPIR-2016-TX-0031.pdf

From: Isaiah Smith Campaign [<mailto:iscampaign@usa.com>]
Sent: Friday, September 16, 2016 1:50 PM
To: Kayser, Mary
Cc: zz_CPD_PoliceMedia; zz_CSO_Administration; Police Chief
Subject: Re: Open Records Request

September 16th, 2016

Ms. Kayser,

Please see my attached open records request. Have an awesome weekend!

Respectfully,
Isaiah X. Smith

Isaiah Smith Campaign
P.O Box 163411
Fort Worth, Texas, 76161
<http://www.isaiahsmith.com/>

Attn: Ms. Mary J. Kayser

ID: SPIR-2016-TX-0031

Records & Information Management

City Hall, Suite L31 1000

Throckmorton St.

Fort Worth, TX 76102

mary.kayser@fortworthtexas.gov

Sent via: Electronic mail

September 16th, 2016

Ms. Mary J. Kayser,

Under the Texas Public Information Act, §6252-17a et seq., I am requesting an opportunity to obtain copies of records that the City of Fort Worth and the Fort Worth Police Department has in its possession. I hereby request a copy of the following records:

1. Records regarding the City of Fort Worth and the Fort Worth Police Department's acquisition of cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays, including invoices, purchase orders, contracts, loan agreements, solicitation letters, correspondence with companies providing the devices, and similar documents. In response to this request, please include records of all contracts, agreements, and communications;
2. Records regarding any arrangement or agreement between the City of Fort Worth, the Fort Worth Police Department and other state law enforcement agencies, other state governmental bodies and federal law enforcement agencies that is in regards and pertaining to the sharing the use of cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays, or any offers by the City of Fort Worth and the Fort Worth Police Department to share the use of cell site simulators with other law enforcement agencies and other governmental bodies;
3. All requests by the Harris Corporation or any other corporation, or any state or federal agencies, to the City of Fort Worth and the Fort Worth Police Department to keep confidential any aspect of the City of Fort Worth and the Fort Worth Police Department's possession and use of cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays, including any non-disclosure agreements between the City of Fort Worth, the Fort Worth Police Department and the Harris Corporation or any other corporation, or any state or federal agencies, regarding the City of Fort Worth and it's police department's possession and use of cell site simulators, X-ray

vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays;

4. Policies and guidelines of the governing use of cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays, including restrictions on when, where, how, and against whom they may be used, limitations on retention and use of collected data, guidance on when a warrant or other legal process must be obtained, and rules governing when the existence and use of cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays may be revealed to the public, criminal defendants, or judges;
5. Any communications or agreements between the City of Fort Worth, the Fort Worth Police Department and wireless service providers (including AT&T, T-Mobile, Verizon, Sprint Nextel, and U.S. Cellular) concerning use of cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays;
6. Any communications, licenses, or agreements between the City of Fort Worth, the Fort Worth Police Department and the Federal Communications Commission and with federal agencies;
7. Records reflecting the number of investigations in which cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays were used by the City of Fort Worth and the Fort Worth Police Department or in which cell site simulators owned by the City of Fort Worth and the Fort Worth Police Department that were used, and the number of those investigations that have resulted in prosecutions;
8. Records reflecting a list of all cases, with docket numbers if available, in which cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays were used as part of the underlying investigation by the City of Fort Worth and the Fort Worth Police Department or in which cell site simulators owned by the City of Fort Worth and the Fort Worth Police Department were used as part of the underlying investigation;
9. All applications submitted to state or federal courts for search warrants or orders authorizing use of cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays by the City of Fort Worth and the Fort Worth Police Department in criminal investigations or authorizing the use of cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays owned by the City of Fort Worth and the Fort Worth Police Department in criminal investigations, as well as any warrants or orders, denials of warrants or orders, and returns of warrants associated with those applications. If any responsive records are sealed, please provide documents sufficient to identify the court, date, and docket number for each sealed document;

10. All City of Fort Worth and Fort Worth Police Department's policies, guidelines, rules, practices, or legal analysis regarding the use of cell site simulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, and stingrays, which and that concern:
 1. restrictions on when, where, how, and against whom they may be used;
 2. what information can be acquired using this technology;
 3. the possibility of disruption of lawful phone calls;
 4. protections for non-targets;
 5. protections for non-targets;
 6. protections for privacy invasions;
 7. when a warrant or other legal process must be obtained;
 8. deployment of this technology in investigations conducted with other agencies or at the request of other agencies;
 9. disclosure of information acquired using this technology to other state and to federal agencies; and
 10. when the existence and use of cell site simulators may be revealed to the public, criminal defendants, or judges

Please note that virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the **Act. Id. § 552.022(a)(1)**; see also **Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988)**. The Act also is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. **Gov't Code § 552.002(a)(2)**; see also **Open Records Decision No. 462 at 4 (1987)**.

I would like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public understanding of the way in which the government operates, the City of Fort Worth and the Fort Worth Police Department's cell site simulators and their use of such items, government intrusion, the privacy rights of citizens, the way in which the government uses cell site simulators, cell site stimulators, X-ray vans, and surveillance enabled light bulbs, social media monitoring software, predictive policing software, closed circuit television cameras, stingrays, and et cetera.

The Texas Public Information Act requires that you "promptly produce" the requested records unless, within 10 days, you have sought an Attorney General's Opinion. As provided by the Texas Public Information Act, I will expect your response within ten (10) business days. Twenty (20) days if my request requires substantial programming or manipulation of data. **See Tex. Gov't Code Ann. Secs. 552.221(d) and 231(c)**. If you expect a significant delay in responding to this request, please contact me with information about when I might expect copies or the ability to inspect the requested records. You can reach me via email at: iscampaign@usa.com.

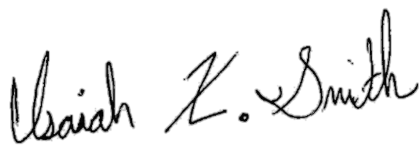
If you deny any or all of this request, please provide a written explanation for the denial and cite each specific statutory exemption(s) you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. If your "governmental body" wants to seek the

Attorney General's Opinion regarding any of our request, I ask that you immediately notify me and then seek a formal decision from the Texas Attorney General not later than ten (10) calendar days from your receipt of this request, as required by the Texas Public Information Act. **See Sec. 552.301.** I would then ask your governmental body to release to me all of the items in which you have not sought the Attorney General's Opinion on. **See Sec. 552.301, 302; see also Open Records Decision No. 664 (2000)(if a governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).**

As you may already know that violation of the open records law can result in a fine of up to \$1,000, imprisonment of up to six months, or both. See Tex. Gov't Code Ann. Sec. 552.353(e). Litigation costs and reasonable attorney fees may also be assessed against you. See Sec. 552.323.

I would prefer to receive all of the requested information to me by email. My email address is at: iscampaign@usa.com. You can also send me my requested records by mail at the following mailing address:

Isaiah X. Smith
Isaiah Smith Campaign
P.O Box 163411
Fort Worth, Texas, 76161



Respectfully,

Isaiah X. Smith

Isaiah Smith Campaign
P.O Box 163411
Fort Worth, Texas, 76161

www.isaiahxsmith.com