



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 24, 1998

Ms. Paula J. Alexander
General Counsel
Metropolitan Transit Authority
Harris County
1201 Louisiana, 23rd Floor
Houston, Texas 77002

OR98-2004

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117800.

The Metropolitan Transit Authority ("Metro") received a request for "all documents submitted by New Flyer [of America ("New Flyer")] in obtaining the bid on IFB 97000159, including the bid package." You indicate that most of the requested information will be released. You ask, however, if responses to questions six and seven of New Flyer's bidder's questionnaire must be released. Questions six and seven seek a list of companies or public bodies to which the bidder has furnished or is furnishing similar bus services. You assert that the information is excepted from disclosure by sections 552.104 and 552.110 of the Government Code because it reveals New Flyer's "client list." We have considered the exception you claim and have reviewed the information at issue.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified New Flyer about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). New Flyer responded to our

notice by arguing that the information contained in Section Three of its bid proposal should be withheld as confidential proprietary information.

In addition to arguing that questions 6 and 7 of the Bidder's Questionnaire are excepted from disclosure, New Flyer contends that other information contained within its proposal should not be released. Metro does not seek to withhold this additional information from the requestor. Consequently, Metro does not seek a decision from this office regarding release of this information. Gov't Code § 552.301; Gov't Code § 552.305 (governmental body may seek attorney general decision when third party privacy or property interests may be involved). This ruling, therefore, does not address the propriety of the release of any information other than that contained in questions 6 and 7 of New Flyer's Bidder's Questionnaire. *Cf. Morales v. Ellen*, 840 S.W.2d 519, 523 (Tex. App.--El Paso 1992, writ denied) (language of section 552.305(b) of the Government Code is permissive and third party need not seek relief from attorney general before claiming interest in courts).

Section 552.104 of the Government Code states:

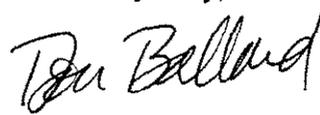
Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2, (1991), 463 (1987), 453 at 3 (1986). It appears that the bidding for the services solicited in the process in question is completed. New Flyer was selected as the successful bidder. Thus, there is no particular competitive situation. We do not believe that section 552.104 is applicable in this instance.

Furthermore, after examining the submitted arguments, we do not believe that New Flyer or Metro has established that the information is protected by section 552.110. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). *See also* Open Records Decision Nos. 552 (1990) (customer lists), 494 (1988) (customer lists may be withheld when it is demonstrated that they meet the restatement's six criteria), 89 (1975). The requested information in questions six and seven must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 117800

Enclosures: Submitted documents

cc: Mr. Claude Lariviere
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(w/o enclosures)