



May 20, 1999

Mr. Roland Castaneda  
General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660183  
Dallas, Texas 75206-0163

OR99-1409

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124324.

The Dallas Area Rapid Transit Authority ( "DART") received a request for all proposals submitted for the DART Surety Support Program under solicitation number P-98036482 and related information. You state that you have provided the requestor with all of the requested information except for four sections of the proposal submitted by Bonding & Technical Services, Inc. ("BTS"). Each page of the withheld information is marked with a legend that states "[c]ontains confidential and/or proprietary information." You have furnished this office with a copy of the withheld information. Pursuant to section 552.305(a) of the Government Code, a governmental body may decline to release information for the purpose of requesting an attorney general's decision when a person's property interests may be involved. DART raises no exceptions to disclosure on its own behalf.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified Bonding & Technical Services, Inc. ("BTS") about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to the 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 Public Information Act in certain circumstances). This office has received a response from BTS that states,

We do not object to the production of all of our proposal, but only to certain pages which were designated by us as confidential and proprietary information. Those pages are attached to this letter. In some instances we would have no objection to the production of these pages with the redactions as indicated. In other instances we are asking that the page, in it's [sic] entirety, not be produced.

BTS raises section 552.110 of the Government Code as an exception to disclosure of the redacted portions of its proposal. We have considered the exception claimed by BTS and have reviewed the documents at issue. Any information that BTS does not object to releasing must be released.

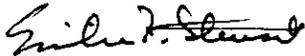
Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption four to the federal Freedom of Information Act when applying the second prong of section 552.110 for commercial and financial information. In *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption four to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 at 4 (1996). To prove substantial competitive harm, the party seeking to prevent disclosure 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. *Id.*

BTS has met its burden under the second prong of section 552.110 for commercial and financial information it seeks to protect from disclosure. You must withhold the information redacted by BTS on pages 3-36 of its proposal.

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.

Sincerely,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS\nc

Ref: ID# 124324

Encl: Submitted documents

cc: Mr. Calvin Stephens  
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(w/o enclosures)

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