



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 19, 2004

Ms. Mary D. Márquez  
Legal/Records Manager  
Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR2004-3136

Dear Ms. Márquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199834.

The Capital Metropolitan Transportation Authority (“Capital Metro”) received two requests for all proposals, including Best and Final Offers, for a particular RFP. You state that Capital Metro will release the majority of the requested information relating to ATC/Vancom, Coach USA Transit Services, McDonald Transit Associates, Inc., and First Transit in accordance with our prior ruling in Open Records Letter No. 2003-6541, issued September 17, 2003. Capital Metro must continue to follow Open Records Letter No. 2003-6541 with respect to the portions of the requested information at issue in that ruling. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 at 6-7 (2001) (criteria for previous determination regarding cases when requested information is precisely the same information as was addressed in a prior attorney general ruling).<sup>1</sup> However with respect to the remaining requested information that was not the subject of our prior ruling, you claim that the release of the submitted information may implicate the proprietary interests of Laidlaw Transit Services, Inc. (“Laidlaw”). You notified Laidlaw of this request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested

---

<sup>1</sup> You state, and provide documentation showing, that you notified ATC/Vancom, Coach USA Transit Services, McDonald Transit Associates, Inc., and First Transit of this request and of your intention to follow our ruling in Open Records Letter No. 2003-6541 with regards to their information. Although you advise these third parties of their right to submit any additional arguments to our office, we only received correspondence from ATC/Vancom. In their brief to this office, ATC/Vancom states that “it has no additional objections or further brief to offer” regarding this request. Thus, you may continue to rely on our prior ruling.

third party to raise and explain applicability of exception to disclosure under Public Information Act ("Act") in certain circumstances). We received arguments from representatives for Laidlaw. We have reviewed Laidlaw's comments and the submitted information.

We first address Laidlaw's argument that the requested information does not qualify as public information under the Act. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." The holding in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), makes clear that almost all information in the physical possession of a governmental body is "public information" subject to the Act. Although Laidlaw argues that their information has been "returned 'unopened'" and thus has not been collected, assembled or maintained in connection with the transaction of business, Capital Metro has submitted a copy of Laidlaw's proposal for our review. Thus, we note that Capital Metro has maintained the requested information in the course of transacting its official business. *See* Gov't Code § 552.002. Laidlaw also contends that because Capital Metro has withdrawn the relevant RFP, it "is no longer transacting official business and, as such, the requested information is not eligible for disclosure" under the Act. In this regard, we note that one of the factors that this office has stated is relevant in deciding whether a document is public information is whether its existence was necessary to or in furtherance of official business. *See* Open Records Decision No. 635 (1995). In this case, Capital Metro solicited, received, and has maintained the requested information in the course of transacting its official business. *See* Gov't Code § 552.002. Laidlaw does not explain how Capital Metro's withdrawal of the RFP negates the information's status as having been collected, assembled, or maintained in connection with the transaction of official business. Therefore, we conclude that the information is public information under the Act, and it may only be withheld if one or more of the Act's exceptions to disclosure apply.

Laidlaw further claims that the submitted information is excepted from disclosure under section 552.104 of the Government Code.<sup>2</sup> We note, however, that section 552.104 only protects the interests of governmental bodies, not those of private parties such as Laidlaw. *See* Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104). Section 552.104 excepts information from disclosure if a governmental body demonstrates that the release of the information would cause potential specific harm

---

<sup>2</sup> We note that Laidlaw seeks to withhold additional information found in Volume 4 of the Proposal, that Capital Metro did not submit to this office for review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by Capital Metro. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

to the governmental body's interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). Capital Metro has not argued that the release of submitted information would harm its interests in a particular competitive situation. Therefore, the submitted information may not be withheld pursuant to section 552.104.

Finally, we address Laidlaw's section 552.110(b) of the Government Code assertion with respect to the submitted information. Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also* Open Records Decision No. 661 (1999).

Upon review, we find that Laidlaw has established the applicability of section 552.110(b) to a portion of the submitted information. Thus, Capital Metro must withhold the information related to Laidlaw's client list that we have marked. With respect to the remaining submitted information, however, we determine that Laidlaw has not made a specific factual or evidentiary showing that substantial competitive harm would result from the release of this information. Therefore, we find that the company has not adequately demonstrated that their remaining information is excepted from disclosure under section 552.110(b). *See* Open Records Decision Nos. 541 at 8 (1990) (general terms of contract with governmental body are usually not excepted from disclosure), 509 at 5 (1988) (stating that because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative); *see also* Open Records Decision Nos. 661 (1999), 319 (1982) (information relating to organization and personnel, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor); *cf.* Open Records Decision Nos. 514 (1988) (public has an interest in knowing prices charged by government contractors), 184 (1978). Consequently, Capital Metro must release the remaining submitted information to the requestors.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 199834

Enc. Submitted documents

c: Mr. Charles H. Helein  
The Helein Law Group, P.C.  
8180 Greensboro Drive, Suite 700  
McLean, Virginia 22102  
(w/o enclosures)

Mr. Michael L. Petrucci  
Associate General Counsel  
First Transit, Inc.  
705 Central Avenue, Suite 300  
Cincinnati, Ohio 45202  
(w/o enclosures)

Mr. Michael E. Heston  
Capehart & Scatchard  
8000 Midlantic Drive, Suite 300  
Mount Laurel, New Jersey 08054  
(w/o enclosures)

Mr. John T. Heoft  
Vice President  
ATC/Vancom, Inc.  
14275 Midway Road, Suite 220  
Addison, Texas 75001  
(w/o enclosures)

Mr. Robert T. Babbit  
McDonald Transit Associates, Inc.  
4040 Fossil Creek Boulevard, S-200  
Fort Worth, Texas 76137  
(w/o enclosures)

Mr. Bradley A. Thomas  
President  
Coach USA Transit Services  
One Progressive Drive  
Horseheads, New York 14845  
(w/o enclosures)