



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 13, 2010

Mr. Hyattye O. Simmons  
General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2010-05153

Dear Mr. Simmons:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 376369 (DART ORR #7164).

Dallas Area Rapid Transit ("DART") received a request for six categories of information pertaining to DART's most recent request for proposal process involving its employee health and pharmacy plan. You do not raise any exceptions against disclosure of the submitted information, but you explain that the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you inform us and provide documentation showing you notified Aetna Life Insurance Company ("Aetna") of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received and considered Aetna's arguments and reviewed the submitted information.

Initially, we must address DART's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's

request for information. *See* Gov't Code § 552.301(d). Section 552.301(e-1) requires a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1).

DART received the request for information on January 29, 2010. Therefore, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was February 12, 2010, and the fifteen-business-day deadline to provide information to the requestor pursuant to section 552.301(e-1) was February 22, 2010. Section 552.308 of the Government Code provides in pertinent part:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period... the requirement is met if the document is sent to the person by first class United States mail *properly addressed* with postage prepaid and:

(1) it bears a post office cancellation mark indicating a time within that period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within that period.

*Id.* § 552.308(a) (emphasis added). We note DART sent the requestor a copy of its request for a ruling from the attorney general on February 11, 2010. However, the address for the requestor was incorrect at that time. DART sent a copy of its request for a ruling to the requestor's correct address on February 26, 2010. As noted above, however, DART was required to mail a properly addressed copy of its request for a ruling to the requestor no later than February 12, 2010. Accordingly, we find that DART has failed to meet the elements of timeliness established by section 552.308(a). Thus, we conclude that DART failed to comply with section 552.301(d) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason

to overcome the presumption of openness, we will consider whether Aetna's information is excepted under the Act.

Aetna argues that portions of its information, including its scorecard assumptions, claim target, and pharmacy performance and discount guarantees are excepted from disclosure under section 552.110(b).<sup>1</sup> Section 552.110(b) of the Government Code protects the proprietary interests of private parties with respect to "commercial 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). Section 552.110(b) 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. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Aetna contends that its pricing information, assumptions, claim target, and guarantees are "critical components of [its] overall financial offer as it relates to a customer's total cost." Aetna asserts that this information constitutes proprietary information the release of which would cause substantial and irreparable competitive harm and requests that this information not be released. We note that Aetna was the winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). We therefore conclude that DART may not withhold any of the submitted information under section 552.110(b) of the Government Code. As no further exceptions are raised, the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

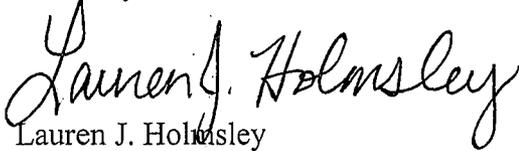
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

---

<sup>1</sup>We note that Aetna also seeks to withhold its references and dental discount guarantee under section 552.110(b) of the Government Code. However, we note that DART has not submitted this information for our 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 DART. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/jb

Ref: ID# 376369

Enc. Submitted documents

c: Requestor  
(w/o enclosures)