



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2010

Ms. Jacqueline E. Hojem
Public Information Coordinator & Senior Paralegal
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2010-05751

Dear Ms. Hojem:

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# 376460 (MTA No. 2010-0112).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for four categories of information pertaining to specified bid proposal. We understand you have released information responsive to Categories 2 and 3 to the requestor. Additionally, you state the information responsive to Category 4 does not exist.¹ Although you take no position with respect to the public availability of the submitted information, you state that its release may implicate the proprietary interests of certain third parties.² Accordingly, you state that you have notified these third parties of the request and of their right to submit arguments to this office as to why the submitted 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 third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

¹ We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

² The interested third parties are as follows: Siemens Transportation Systems ("Siemens"); ALSTOM Transport ("ALSTOM"); Kinkisharyo International, Inc. ("Kinkisharyo"); CAF USA, Inc. ("CAF"); Squire, Sanders & Dempsey L.L.P. ("Squire"); and AnsaldoBreda, Inc. ("AnsaldoBreda").

Interested third parties are allowed ten business days after the date of their receipt of the governmental body's notice under section 552.305(d) to submit their reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude that any of the third parties have protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note that some of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, as no exceptions to disclosure have been raised, the submitted information must be released, but only in accordance with copyright law.

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, 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 376460

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Steve Roescher
Siemens Transportation Services
7810 Sheffer Parkway, Suite 100
Littleton, Colorado 80127
(w/o enclosures)

Mr. Charles Wochele
ALSTOM Transport
1025 John Street
West Henrietta, New York 14586
(w/o enclosures)

Mr. Rainer Hombach
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20 Cayen Point Avenue
Jersey City, New Jersey 07305
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Ms. Virginia Verdeja
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Mr. Alvaro J. Mestre
Squire, Sanders & Dempsey L.L.P.
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