



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2011

Ms. Shirley Thomas
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2011-00359

Dear Ms. Thomas:

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# 405090 (Dart ORR 7791).

The Dallas Area Rapid Transit ("DART") received a request for a specified business questionnaire and "any backup explanation that was submitted by Titan Outdoor LLC for the [p]roposal submitted by them for the Display Advertising on DART Buses and Selected Facilities." You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You also state the request may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified Titan Outdoor, LLC ("Titan") of DART's receipt of the request for information and of the company's right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Titan. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us DART requested clarification of the portion of the request relating to "any backup explanation." *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). As of the date of this letter, you have not indicated DART has received a response to its request for clarification. Accordingly, DART has no obligation at this time to release any information that might be responsive to this portion of the request. However, if DART receives clarification and wishes to withhold any of the information encompassed by the clarified request, you must request another decision from this office at that time. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us the submitted information pertains to an active solicitation that has not yet been awarded by DART. You state release of the submitted information would give advantage to potential bidders because it discloses commercial and financial information prior to the award of the contract. Having considered your arguments, we find you have demonstrated that release of the submitted information would harm DART's interests in a particular ongoing competitive situation. *See* ORD 592. Therefore, we conclude DART may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 405090

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Ms. Amy Berlin
Executive Vice President/General Counsel
Titan

850 Third Avenue
New York, New York 10022
(w/o enclosures)