



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2011

Ms. Denise M. Young
Staff Attorney
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2011-01496

Dear Ms. Young:

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# 408080.

The Capital Metropolitan Transportation Authority (the "authority") received a request for (1) evaluation team member names for Solicitation 119198 UT Shuttle BRT Operations and Maintenance; (2) individual score sheets from Solicitation 119198 UT Shuttle BRT Operations and Maintenance; (3) the proposal responses from First Transit, Inc. ("First Transit") and Veolia Transportation ("Veolia") for Solicitation 119198 UT Shuttle BRT Operations and Maintenance; (4) evaluation team member names for Solicitation 116692 Fixed Route Service; and (5) individual scoring sheets from Solicitation 116692 Fixed Route Service. The authority received a second request for the same information except the requestor asked for the proposal response from MV Transportation, Inc. ("MV") for Solicitation 119198 UT Shuttle BRT Operations and Maintenance in item (3) instead of the proposal response from First Transit for Solicitation 119198 UT Shuttle BRT Operations and Maintenance. You indicate the release of the requested information may implicate the proprietary interests of third parties. Accordingly, you inform us, pursuant to section 552.305 of the Government Code, the authority has notified First Transit, Veolia, and MV of the respective requests and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be

released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). The authority states it received notification from MV stating MV will not submit arguments. Thus, with the exception of Veolia's proposal, the authority has released information responsive to the second request, which is the same information responsive to the first request. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Next, we must address the authority'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. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). Section 552.301(e) requires a governmental body to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement of sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You state the authority received the first request on November 8, 2010. Accordingly, the ten-business-day deadline was November 23, 2010. You did not request a ruling on the first request until November 29, 2010.¹ In addition, as of the date of this letter, you have not submitted to this office a copy of the first written request for information. Consequently, we find the authority failed to comply with the procedural requirements of section 552.301 with regards to the first request.

Pursuant to section 552.302 of the Government Code, the submitted information responsive to the first request is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Forth Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You raise section 552.104 and claim there are third-party interests at stake. We note section 552.104 is a discretionary exception to disclosure that protects a governmental body's

¹Although the authority states it faxed a request for a decision from this office on November 18, 2010, this office did not receive said fax.

interests and may be waived. *See* Gov't Code § 552.007; *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the authority has waived its claim under section 552.104 and, therefore, may not withhold any information responsive to the first request under this exception. We note in waiving section 552.104 for the information responsive to the first request, the authority also waived section 552.104 with respect to Veolia's proposal, the same information responsive to the second request. However, because sections 552.110 and 552.136 of the Government Code, as well as third party interests, can provide a compelling reason to withhold information, we will consider whether First Transit's and Veolia's proposals are excepted from disclosure under the Act.

Although the authority argues the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the authority's argument under section 552.110. We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its 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). First Transit states it will not submit arguments to this office seeking to withhold its requested information. Additionally, as of the date of this letter, we have not received comments from Veolia on why its submitted information should not be released. Therefore, we have no basis to conclude First Transit or Veolia has protected proprietary interests in their requested 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. Accordingly, the authority may not withhold any portion of First Transit's or Veolia's requested information on the basis of any proprietary interest they may have in it.

We note section 552.136(b) of the Government Code provides "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the authority must withhold the insurance policy numbers we have marked in Veolia's and First Transit's information pursuant to section 552.136 of the

Government Code.² As you raise no further exceptions for the remaining information, it must be released to the requestor.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 408080

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Richard Alexander
Veolia Transportation
720 East Butterfield Road, Suite 300
Lombard, Illinois 60148
(w/o enclosures)

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.