



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 7, 2011

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

OR2011-01857

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# 408344 (MTA No. 2011-0043).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for five categories of information relating to Solicitation No. RP0900042. You inform us the requestor has since withdrawn part five of the request.<sup>1</sup> You state METRO has no information responsive to parts two and four of the request.<sup>2</sup> You also state METRO is releasing all of the information responsive to part one of the request and some of the information responsive to part three, pursuant to Open Records Letter No. 2010-16294 (2010).<sup>3</sup> Although you take no position on the public availability of the information

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<sup>1</sup>Thus, because the information submitted as Exhibit D, which you state is responsive to part five, is no longer responsive to the request, we need not address the public availability of Exhibit D or the arguments we received from the Texas General Land Office against disclosure of that information.

<sup>2</sup>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 Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>*See* Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

submitted as Exhibit C, which you state is responsive to part three, you believe Exhibit C may implicate the proprietary interests of ProSidian Consulting LLC ("ProSidian"). You inform us ProSidian was notified of this request for information and of its right to submit arguments to this office as to why Exhibit C should not be released.<sup>4</sup> See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 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 reviewed Exhibit C.

We note an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from ProSidian. Thus, because ProSidian has not demonstrated any information in Exhibit C is proprietary for purposes of the Act, METRO may not withhold Exhibit C on the basis of any interest ProSidian may have in the information. See *id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). As METRO does not claim an exception to disclosure, Exhibit C must be released in its entirety.

We note some of the information in Exhibit C appears to be protected by copyright law. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. See Open Records Decision No. 180 at 3 (1977); see also Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. See ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials 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.

In summary, METRO must release Exhibit C, but any information protected by copyright may only be released in compliance 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.

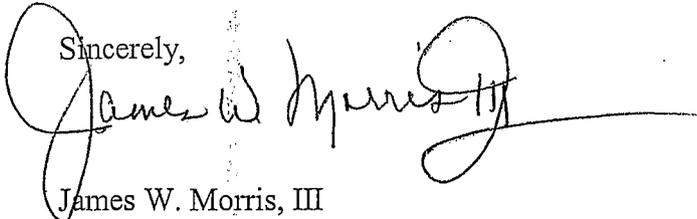
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>4</sup>You inform us METRO also notified Reliant Energy of its right to submit arguments against disclosure of Exhibit D, which is no longer responsive to the request.

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 W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 408344

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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Mr. Adrian Woolcock  
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