



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 29, 2011

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

OR2011-04296

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# 414190 (DART ORR # 7949).

The Dallas Area Rapid Transit ("DART") received a request for a tabulation of the costs presented with a recommendation related to a DART bus procurement solicitation.<sup>1</sup> You state DART released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 104, and 552.131 of the Government Code. Daimler Buses North America ("Daimler") and North American Bus Industries, Inc. ("NABI"), which are interested third parties, also assert some of their information is excepted from disclosure under the Act. *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 considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>Although DART informs us it received two requests for this information, we note it has submitted a copy of only one request. We also note the requestor has asked DART to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume DART has made a good faith effort to do so.

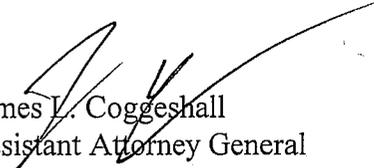
Section 552.104 of the Government Code exempts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state "[a]t the time of the request the DART solicitation for the bus procurement had not been awarded by DART." You also assert release of the submitted information "would directly harm DART because [it] contains the cost recommendations provided to DART by NABI and Daimler before the contract was awarded" and that "this type of information provides bidders with an unfair advantage to DART's reviewing process for this bid." Based on your representations and our review, we determine DART has demonstrated release of the submitted information would harm its interests in a competitive situation. Accordingly, DART may withhold the submitted information under section 552.104 of the Government Code.<sup>2</sup>

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, 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 L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tf

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<sup>2</sup>As our ruling is dispositive, we do not address the other arguments to withhold this information.

Ref: ID# 414190

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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