



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2011

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

OR2011-15720

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# 434274 (MTA No. 2011-0338).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for all documents pertaining to request for proposals number RP0700015. You state you have made some of the requested information available to the requestor. Although we understand METRO takes no position on the public availability of the submitted information, you assert its release may implicate the proprietary interests of First Transit, Inc. ("FTI") and Laidlaw Transit Services, Inc. ("Laidlaw"). Thus, pursuant to section 552.305 of the Government Code, you notified FTI and Laidlaw of the request and of their right to submit arguments to this office as to why the submitted information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received comments from FTI. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2007-15009 (2007). In that ruling, we determined, in part, METRO must withhold the portions of FTI's information we marked under section 552.136 of the Government Code but must release the remainder of

FTI's proposal in accordance with copyright law.¹ As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, METRO must continue to rely on Open Records Letter No. 2007-15009 as a previous determination and withhold or release FTI's proposal in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As we are able to make this determination, we need not address the comments submitted by FTI. However, we will consider Laidlaw's information, as it was not previously ruled upon.²

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from Laidlaw. Thus, Laidlaw has not demonstrated it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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, METRO may not withhold any of the submitted information based on the proprietary interests of Laidlaw.

We note some of Laidlaw's information may be 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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.

In summary, we conclude METRO must continue to rely on Open Records Letter No. 2007-15009 as a previous determination and withhold or release FTI's proposal in accordance with Open Records Letter No. 2007-15009. The remaining information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.

¹We note that we addressed FTI's arguments against disclosure of its information in Open Records Letter No. 2007-15009.

²We note Laidlaw was the requestor in Open Records Letter No. 2007-15009, and MV Transportation, Inc. is the requestor in the present request.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 434274

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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