



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2011

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

OR2011-16266

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# 435214 (DART ORR 8442).

Dallas Area Rapid Transit ("DART") received a request for (1) any reports or presentations made by Wai-Wize; (2) any contracts with Wai-Wize; and (3) how much has been paid to Wai-Wize under the Minority Owned Business Enterprise program. You state DART released some of the responsive information. Although you indicate DART takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of Wai-Wize. Accordingly, you state, and provide documentation showing, DART notified this company of the requests and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); 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 the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2011-14584 (2011) and 2009-06005 (2009). In Open Records Letter No. 2011-14584, Wai-Wize did not submit any comments, and we concluded DART may not withhold any of the submitted information on the basis of Wai-Wize's proprietary interests. Furthermore,

we ruled that DART must refer the information to the Transportation Security Administration to make a determination concerning disclosure of the submitted information. In Open Records Letter No. 2009-06005, Wai-Wize did not submit any comments, and we concluded, in part, DART may not withhold any of the submitted information on the basis of Wai-Wize's proprietary interests. Furthermore, we ruled the submitted information must be released. As we have no indication the law, facts, and circumstances on which the prior rulings were based have changed, DART must continue to rely on Open Records Letter Nos. 2011-14584 and 2009-06605 as previous determinations for any of the currently submitted information that was at issue in those rulings. *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).

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). As of the date of this letter, we have not received comments from Wai-Wize explaining why the submitted information should not be released. Therefore, we have no basis to conclude this third party has a protected proprietary interest in the submitted 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. Consequently, DART may not withhold the submitted information on the basis of any proprietary interests Wai-Wize may have in the information.

In summary, to the extent any of the submitted information was at issue in Open Records Letter No. 2011-14584 or Open Records Letter No. 2009-06005, DART must continue to rely on those rulings as previous determinations. DART must release the remaining 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,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 435214

Enc. Submitted documents

c: Requestor
(w/o enclosures)