



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2011

Ms. Kerri L. Butcher
Interim Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2011-17087

Dear Ms. Butcher:

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# 436706.

The Capital Metropolitan Transportation Authority (the "authority") received a request for all information, including addendums and modifications to, request for proposal 105101 contract with Veolia Transportation Services, Inc. ("Veolia"), dated November 1, 2009. You state you have released some of the responsive information to the requestor. We understand you take no position as to whether the submitted information is excepted under the Act.¹ In addition, you state the requested information may implicate the proprietary interests of Veolia. Accordingly, you provided notice of the request to Veolia notifying it of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code §552.305 (permitting interested third parties 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). We have reviewed the submitted information.

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

¹Although you raise section 552.104 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information.

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, this office has not received comments from Veolia explaining why its information should not be released. Therefore, we have no basis to conclude Veolia has any protected proprietary interests in its 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. Accordingly, the authority may not withhold any portion of the submitted information upon the proprietary interests of Veolia.

We note the submitted information contains motor vehicle record information subject to section 552.130 of the Government Code.² Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Therefore, the authority must withhold the Vehicle Identification Numbers and license plate numbers we have marked under section 552.130.

We also note portions of the submitted information are 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). However, 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, the authority must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.

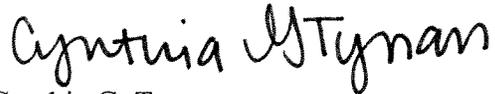
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 black ink that reads "Cynthia G. Tynan". The signature is written in a cursive, flowing style.

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 436706

Enc. Submitted documents

c: Requestor
(w/o enclosures)