



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2011

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

OR2011-17424

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# 439687.

Dallas Area Rapid Transit ("DART") received a request for information submitted by McCollum Management Consulting, Inc. ("McCollum") in response to a specified request for proposals. Although DART takes no position regarding whether the requested information is excepted from disclosure, you state its release may implicate McCollum's proprietary interests. Accordingly, you provide documentation showing you have notified McCollum of the request and its right to submit arguments to this office. *See* 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 in the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note a portion of the information you have submitted is not responsive to the instant request, which seeks only McCollum's proposal. This ruling does not address the public availability of the non-responsive information, which we have marked, and DART is not required to release non-responsive information in response to this request.

We next note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from McCollum. Thus, we have no basis

to conclude McCollum 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, DART may not withhold any of the information at issue on the basis of any proprietary interest McCollum may have in the information. As no exceptions to disclosure are raised for the responsive submitted information, it must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 439687

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Brian E. McCollum
McCollum Management
Consulting, Inc.
13508 Straw Bale Lane
Darmestown, Maryland 20878
(w/o enclosures)

Mr. Kenneth A. Korach
President
Transportation Resources
Associates
1608 Walnut Street, Suite 1602
Philadelphia, Pennsylvania 19103
(w/o enclosures)