



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2012

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

OR2012-02012

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# 444886 (MTA Ref. No. 2012-0062).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for (1) all submitted proposals pertaining to a specified procurement related to RFP No. RP1000027, (2) all pricing forms related to this procurement in both the proposal and subsequent phases, and (3) the signed agreement between two named entities. You state you have released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state the proprietary interests of First Transit, Inc. ("FTI") might be implicated. Accordingly, you provided notice to FTI of the request and 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 party 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 considered the exception you claim and reviewed the submitted information.

Initially, you inform us you have released a portion of the responsive information which was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-09253 (2011). In that ruling, we determined the authority must

release the submitted information in its entirety. You do not indicate there has been a change in the law, facts, or circumstances with respect to the responsive information at issue since the issuance of the previous ruling. Accordingly, we agree the authority must continue to rely on Open Records Letter No. 2011-09253 as a previous determination and release identical information 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).

You raise section 552.110 of the Government Code for the submitted information. However, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. As such, a governmental body may not raise section 552.110 on behalf of a third party. Therefore, if we do not receive comments from a third party explaining why the information at issue should not be released, we will conclude section 552.110 is not applicable. 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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from FTI explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the requested information would implicate FTI's interests. *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 (1990). Accordingly, we conclude the authority may not withhold any of the requested information on the basis of any interest FTI may have in the information.

We note the submitted information contains information subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130. Accordingly, the authority must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the authority must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the submitted information appears to 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, the authority must continue to rely on Open Records Letter No. 2011-09253 as a previous determination and release identical information in accordance with that ruling. The authority must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The remaining information must be released, but any information protected by copyright 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](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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/em

Ref: ID# 444886

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Bradley Thomas  
First Transit, Inc.  
600 Vine Street #1400  
Cincinnati, Ohio 45202  
(w/o enclosures)