



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2012

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

OR2012-07249

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# 453724 (MTA No. 2012-0166).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for information related to the authority's SAP contract, solution and scope documents, project plan, and development objects list. You state you have released the requested contract to the requestor. Although you take no position on the public availability of the submitted information, you state the information at issue may implicate the proprietary interests of SAP Public Services, Inc. ("SAP"). Accordingly, you submit documentation showing you notified SAP of the request for information and of the company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments submitted by SAP. We have considered the submitted arguments and reviewed the submitted information.

We understand SAP to contend some of its information is confidential pursuant to its Professional Services Agreement with the authority. Information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203

at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

SAP submits arguments against disclosure of its information under section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

SAP contends the submitted information is commercial or financial information, release of which would cause substantial competitive harm to SAP. Upon review, we find SAP has made only conclusory allegations that release of its information would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such allegations. *See* Gov’t Code § 552.110(b). As such, the authority may not withhold any of the submitted information under section 552.110(b) of the Government Code. As no other arguments against release of the information at issue have been submitted, the submitted information 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 453724

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Mr. Terence Dougherty
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