



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2012

Mr. David C. Schulze
Acting General Counsel
Dallas Area Rapid Transit
P.O. 660163
Dallas, TX 75266-0163

OR2012-08490

Dear Mr. Schulze:

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# 455497 (DART ORR# 8897).

Dallas Area Rapid Transit ("DART") received a request for all bids and proposals, including attachments and exhibits, for "Mobility Management Service Delivery Contract Solicitation N[o].: P-1019730[.]" You state you have released some information to the requestor. Although you take no position with respect to the submitted information, you state it may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, you notified Veolia Transportation ("Veolia"); First Transit; American Logistics Company, LLC ("American"); and MV Transportation, Inc. ("MV") of the request and of the right of each company to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from First Transit and MV. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the proposals submitted by Veolia and First Transit were the subject of a previous request for information, as a result of which this office issued Open Records Letter

No. 2012-07738 (2012). In that ruling, we determined DART must withhold the information we marked under sections 552.110 and 552.136 of the Government Code and release the remaining information. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling as to Veolia and First Transit's proposals were based, we conclude DART must rely on Open Records Letter No. 2012-07738 as a previous determination for Veolia and First Transit's proposals and continue to withhold or release that information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (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).

Next, 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 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 American explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of any of the information at issue would implicate the interests of this company. *See id.* § 552.110(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, we conclude DART may not withhold any of the information on the basis of any interest American may have in its information.

We understand MV to raise 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.*; ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Upon review, we find MV has made only general conclusory assertions that release of the "Washington Metropolitan Area Transit Authority policies and procedures contained" in its proposal would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such assertions. *See generally* Open Records Decision Nos. 661, 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization

and personnel, professional references, market studies, and qualifications are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Consequently, DART may not withhold any of the submitted information under section 552.110(b) of the Government Code.

We note portions of the submitted information are subject to section 552.136 of the Government Code.¹ Section 552.136 provides “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, DART must withhold the bank account numbers we have marked under section 552.136.

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, with regard to the proposals submitted by Veolia and First Transit, DART must rely on Open Records Letter No. 2012-07738 as a previous determination and continue to withhold or release Veolia and First Transit’s proposals in accordance with that ruling. DART must withhold the bank account numbers we have marked under section 552.136 of the Government Code. The remaining information must be released; however, any information subject to 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, 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

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

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 455497

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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