



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2012

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

OR2012-10689

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# 458793.

The Capital Metropolitan Transit Authority (the "authority") received a request for the following information related to RFP 122551 - Fixed Route Services and RFP 122639 - Paratransit Services: pricing pages, scoring pages, and technical responses from MV Transportation ("MV"), Veolia Transportation Services, Inc. ("Veolia"), and McDonald Transit ("McDonald"). The authority released some information to the requestor and claim the remaining information is excepted from disclosure under section 552.104 of the Government Code. In addition, because release of the information may implicate the proprietary interests of the respondents, the authority notified MV, Veolia, and McDonald of the request for information and their right to submit arguments stating why their 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); *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 to disclosure in certain circumstances). McDonald authorizes the authority to release its information and MV authorizes the release of a portion of its information. We have considered the exception the authority claims and reviewed the submitted information.

Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). The authority states release of the submitted information would provide an advantage to a competitor or bidder but provides no further explanation. Because the authority failed to demonstrate how release of the submitted information would result in harm, the authority may not withhold the information under section 552.104 of the Government Code.

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). Although MV stated in an e-mail to the authority that it objects to the release of portions of its information, as of the date of this ruling we have not received comments from MV. Thus, we have no basis to conclude MV 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 the 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 MV’s information on the basis of any proprietary interest MV may have in the information.

Veolia raises section 552.110(b) of the Government Code as an exception to disclosure of its information. Section 552.110(b) excepts from disclosure “commercial 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.*; 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).

Veolia argues its pricing information, resumes of key personnel, organization chart, references, safety plan, and training and retention plans are sensitive and proprietary information. Veolia contends release of its commercial or financial information would cause substantial competitive harm to its competitive position as it competes in response to other proposals. Upon review, we find Veolia has established release of its pricing information and some of its customer information would result in substantial competitive harm. Accordingly, the authority must withhold Veolia’s pricing information on pages 3-10, 13-20, 24-31, 35-46, 50-61, 63-79, 82-87, 90-96, 98-115, 119-124, and 127-132 of the

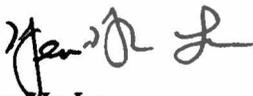
CD labeled "Veolia Transportation," and the customer information we have marked under section 552.110(b) of the Government Code. We note, however, Veolia has made its remaining customer information publicly available on its website. As this information is publicly available, we find the release of this information would not cause Veolia substantial competitive harm. Further, we find Veolia has made only conclusory allegations that the release of its remaining information would result in substantial competitive harm. See Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 319 at 3 (1982) (information relating to organization, personnel, and professional references not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the authority may not withhold Veolia's remaining information under section 552.110(b) of the Government Code.

In summary, the authority must withhold Veolia's pricing information as indicated above and its customer information we marked under section 552.110(b). The authority must release the remaining information.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/bs

Ref: ID# 458793

Enc. Marked documents

**c: Requestor
(w/o enclosures)**

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