



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 14, 2012

Ms. Sol M. Cortez  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901

OR2012-12779

Dear Ms. Cortez:

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# 462431.

The City of El Paso (the "city") received a request for options 1 and 3 of responses to solicitation number 2012-040R: Management and Operation Transit and Lift System. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of MV Transportation, Inc. ("MV"), Project Amistad ("Amistad"), and McDonald Transit Associates, Inc. ("McDonald").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *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.

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 information relating to that party should be withheld from public disclosure. *See Gov't Code*

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<sup>1</sup>Although you raise sections 552.101, 552.104, and 552.110 of the Government Code for the submitted information, you have not provided any arguments to support these exceptions. Therefore, we assume you have withdrawn your claim these sections applies to the submitted information. *See Gov't Code §§ 552.301, .302.*

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude MV, Amistad, or McDonald have a protected proprietary interest in the submitted information. *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. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interests MV, Amistad, or McDonald may have in the information.

We note some of the materials at issue may 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, as no exceptions to disclosure have been raised, the submitted information must be released. However, any portion of the submitted information that is subject to copyright may be released only 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/som

Ref: ID# 462431

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Xavier Banales  
Chief Executive Office  
Project Amistad  
208 South Marienfeld, #131  
Midland, Texas 79701  
(w/o enclosures)

Mr. Robert T. Babbitt  
President  
McDonald Transit  
3800 Sandshell Drive, Suite 175  
Fort Worth, Texas 76137  
(w/o enclosures)

Mr. Eduardo Carrion  
MV Transportation, Inc.  
4620 Westamerica Drive  
Fairfield, California 94534  
(w/o enclosures)