



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2016

Ms. Halfreda Anderson-Nelson
Public Information Officer
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2016-19028

Dear Ms. Anderson-Nelson:

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# 623658 (DART ORR W000800-060416).

Dallas Area Rapid Transit ("DART") received a request for specified proposals submitted to DART by InComm Holdings, Inc. ("InComm") and Ready Credit Corporation. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the information may implicate the proprietary interests of InComm and Ready Credit Corporation. Accordingly, you state you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 received comments from InComm. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note in a letter dated June 28, 2016, you state DART wishes to withdraw its request for an open records decision with respect to a portion of the submitted information because the requestor withdrew the portion of his request pertaining to the proposal submitted by Ready Credit Corporation. Therefore, the information pertaining to Ready Credit Corporation is not responsive to this request. This ruling does not address the public availability of non-responsive information, and DART is not required to release such information in response to the request.

We note InComm argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what DART has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information DART submitted as responsive to the request for information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. InComm states it has competitors. In addition, InComm states release of its information at issue would give advantage to its competitors or other bidders. After review of the information at issue and consideration of the arguments, we find InComm has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude DART may withhold the information indicated by InComm under section 552.104(a) of the Government Code.¹

We note some of the remaining responsive information 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, DART may withhold the information indicated by InComm under section 552.104(a) of the Government Code. DART must release the remaining responsive information; however, any information protected by copyright may only be released in accordance with copyright law.

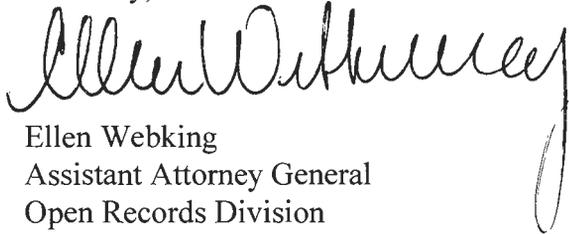
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.texasattorneygeneral.gov/open/>

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 623658

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)