



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2012

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

OR2012-13012

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# 462831 (ORR #9073).

Dallas Area Rapid Transit ("DART") received a request for eight categories of information related to request for proposals number P-1019730. You state DART has released some of the requested information. You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, you state, and provide documentation showing, you notified MV Transportation, Inc. ("MV"), of the request and of its right to submit arguments 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 at 3 (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.

Initially, we note the submitted information appears to have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-08490 (2012). In that ruling, we determined, in part, that DART must withhold bank account numbers under section 552.136 of the Government Code and release MV's remaining responsive information in accordance with copyright law. As we have no indication that there has been any change in the law, facts, or circumstances on which the

previous ruling was based, we conclude DART must rely on Open Records Letter No. 2012-08490 as a previous determination and withhold or release the identical 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). To the extent the submitted information was not at issue in the prior ruling, we consider whether any of it is excepted from public disclosure under the Act.

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, MV has not submitted to this office any reasons explaining why the submitted information should not be released. We thus have no basis for concluding any portion of the submitted information constitutes proprietary information of that company, and DART may not withhold any portion of the submitted information on that basis. *See* 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.

We note the submitted information contains a bank account number that is subject to section 552.136 of the Government Code.¹ Section 552.136 provides in part that "[n]otwithstanding any other provision of [the Act], 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"). Upon review, we determine DART must withhold the bank account number we have marked under section 552.136 of the Government Code.

Finally, 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.


¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, DART must rely on Open Records Letter No. 2012-08490 as a previous determination and withhold or release MV's previously ruled-upon information in accordance with that ruling. DART must withhold the bank account number we have marked under section 552.136 of the Government Code. The remaining submitted 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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 462831

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Gary Coles
Senior Vice President
MV Transportation
4620 Westamerica Drive
Fairfield, California 94534
(w/o enclosures)

