



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2015

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

OR2015-15335

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# 573206 (DART ORRs 11561 and 11577).

Dallas Area Rapid Transit ("DART") received two requests from separate requestors for information pertaining to request for proposals number P-2005858.¹ You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Bombardier Mass Transit Corporation ("Bombardier") and Herzog Transit Services, Inc. ("Herzog"). Accordingly, you state, and provide documentation showing, you notified Bombardier and Herzog of the requests for information and of their rights 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

¹You state DART sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Bombardier. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). 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.” *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264 (Tex. June 19, 2015). You represent the submitted information pertains to a competitive bidding situation. In addition, you state a contract has not been awarded and release of the submitted information would give the bidders an unfair advantage. After review of the information at issue and consideration of the arguments, we find DART has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude DART may withhold the submitted information under section 552.104(a) of the Government Code.² *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

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/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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

LBW/bhf

Ref: ID# 573206

Enc. Submitted documents

c: Requestors
(w/o enclosures)

Mr. C. Scott Perry
Executive Vice President
Herzog Transit Services Inc.
203 North Britain Road
Irving, Texas 75061
(w/o enclosures)