



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2019

Ms. Tangerla Williams
Temporary Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2019-01054

Dear Ms. Williams:

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# 746161 (ORR# W003268-101818).

Dallas Area Rapid Transit ("DART") received a request for a performance matrix and the last twelve months of invoices related to a specified contract. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of VIX Technology (USA), Inc. ("Vix"). Accordingly, you state, and provide documentation showing, you notified Vix of the request for information and of its 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 considered the exception you claim and reviewed the submitted information.

Initially, we note some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-25565 (2015), 2016-00325, and 2016-07659A (2016). In response to these rulings, Vix has filed a lawsuit against our office. *See Vix Technology (USA), Inc. v. Attorney Gen. of Tex., et al.*, No. D-I-GN-16-001972 (126th Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in this lawsuit, we will allow the trial court to resolve the issue of

whether the information that is the subject of the pending litigation must be released to the public.¹ Additionally, we will consider the public availability of the remaining information to the extent the information at issue is not subject to litigation.

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 § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Vix explaining why the submitted information should not be released. Therefore, we have no basis to conclude Vix has a protected proprietary interest in the remaining 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, DART may not withhold the remaining information on the basis of any proprietary interest Vix may have in the information. As no exceptions to disclosure are raised, to the extent the remaining information is not subject to litigation, DART 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.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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

¹As we are able to make this determination, we need not address arguments against disclosure of this information.

Ref: ID# 746161

Enc. Submitted documents

c: Requestor
(w/o enclosures)