



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 2, 2019

Ms. Jacqueline E. Hojem  
Public Information Coordinator  
Metropolitan Transit Authority of Harris County  
P.O. Box 61429  
Houston, Texas 77208-1429

OR2019-11743

Dear Ms. Hojem:

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# 763067 (Ref. No. 2019-0368).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for the winning proposals pertaining to a specified request for qualifications. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of HDR Engineering, Inc. ("HDR") and WSP USA, Inc. ("WSP"). Accordingly, you state, and provide documentation showing, you notified HDR and WSP 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 received comments from HDR and WSP. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor asks METRO to answer a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 1-2. We assume METRO has made a good-faith effort to do so.

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). 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. HDR and WSP assert portions of their information at issue are excepted from disclosure under section 552.104. HDR and WSP state they have competitors. Further, HDR and WSP assert release of the information at issue would provide a competitive advantage to their competitors. After review of the information at issue and consideration of the arguments, we find HDR and WSP have established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, METRO may withhold the information we marked under section 552.104(a) of the Government Code.<sup>1</sup> METRO 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](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,



Blake Brennan  
Attorney  
Open Records Division

BB/gw

Ref: ID# 763067

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 2 Third Parties  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.