



**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

OR2019-11745

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# 763069 (MTA No. 2019-0367).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for the winning proposal and the number of competitive proposals for a specified request for proposals. Although the authority takes no position as to whether the submitted information is excepted under the Act, the authority states release of the submitted information may implicate the proprietary interests of TransCoreITS, LLC ("TransCore"). Accordingly, the authority states, and provides documentation showing, it notified TransCore of the request for information and of the 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 TransCore. We have reviewed the submitted arguments and the submitted information.

Initially, we note the requestor asks the authority 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. *See* Open Records Decision Nos. 561 at 8-9 (1990), 555 at 1-2. We assume the authority 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. TransCore states it has competitors. In addition, TransCore states release of its information at issue “would result in the information being exploited by competitors in future procurements and allow competitors to copy TransCore’s operational solution and strategy and estimate TransCore’s costs and margins.” Further, TransCore asserts release of its information at issue “would give a competitor an unfair advantage by revealing TransCore’s unique operational solution, working methodology, and approach to delivery . . . [thereby] frustrating the integrity of the bidding process.” After review of the information at issue and consideration of the arguments, we find TransCore has established the release of its information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the information we have marked under section 552.104(a) of the Government Code on behalf of TransCore.<sup>1</sup> The authority 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,



Lecelle Clarke  
Attorney  
Open Records Division

LC/gw

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

Ref: ID# 763069

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)