



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 4, 2019

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

OR2019-14734

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# 768952 (Ref. No. W0003730-031519).

Dallas Area Rapid Transit ("DART") received a request for specified agreements between DART and MV Transportation. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of MV Transportation. Accordingly, you state, and provide documentation showing, you notified MV Transportation of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2017-27921 (2017). We also note some of the requested information was the subject of Open Records

Letter No. 2018-19281 (2018). In Open Records Letter No. 2018-19281, we determined 1) DART must continue to rely on Open Records Letter No. 2017-27921 as a previous determination and withhold or release the information at issue in accordance with that ruling, and 2) DART must release the remaining information. We have no indication the law, facts, or circumstances on which the prior rulings were based have not changed. Thus, DART must continue to rely on Open Records Letter No. 2018-19281 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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. MV Transportation states it has competitors. In addition, MV Transportation states release of the information at issue would give its competitors an unfair advantage. After review of the information at issue and consideration of the arguments, we find MV Transportation has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude DART may withhold the information pertaining to Solicitation P-2044267 under section 552.104(a) of the Government Code.¹

In summary, DART must continue to rely on Open Records Letter No. 2018-19281 as a previous determination and withhold or release the information at issue in accordance with that ruling. DART may withhold the information pertaining to Solicitation P-2044267 under section 552.104(a) of the Government Code.

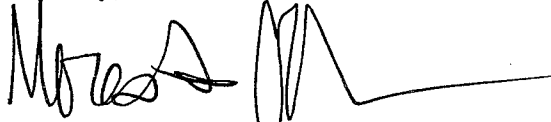
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/ori_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

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/gw

Ref: ID# 768952

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)