



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 13, 2019

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

OR2019-16011

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# 770274 (ORR #W003752-032619).

Dallas Area Rapid Transit ("DART") received a request for specified lease and maintenance agreements. Although DART takes no position as to whether the submitted responsive information is excepted under the Act, DART states release of the responsive information may implicate the proprietary interests of Ricoh USA, Inc. ("Ricoh") and XEROX Corporation ("XEROX"). Accordingly, DART states, and provides documentation showing, it notified Ricoh and XEROX 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 reviewed the submitted information.

Initially, we note, and DART informs us, some of the submitted information, which we have indicated, is not responsive to the instant request for information because it does not pertain to the information requested. This ruling does not address the public availability of any information that is not responsive to the request and DART is not required to release such information in response to this request.

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 Ricoh or XEROX explaining why the submitted information should not be released. Therefore, we have no basis to conclude Ricoh or XEROX has a protected proprietary interest in the submitted 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 submitted information on the basis of any proprietary interest Ricoh or XEROX may have in the information.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. DART must release the submitted responsive information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Lecelle Clarke
Attorney
Open Records Division

LC/gw

Ref: ID# 770274

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 2 Third Parties
(w/o enclosures)