



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 30, 2019

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

OR2019-24410

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# 783580 (Ref. No. W004003-061119).

Dallas Area Rapid Transit ("DART") received a request for a specified proposal for DART Solicitation P-2037370. 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 Stadler US ("Stadler"). Accordingly, you state, and provide documentation showing, you notified Stadler 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(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 Stadler. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Stadler seeks to withhold information not submitted to this office by DART. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by DART, this ruling does not address this information and is limited to the information submitted as responsive by DART.

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 840. Stadler states it has competitors. Stadler also states the information at issue, if released, would cause “irreparable harm to [the company]” and “make it almost impossible for [the company] to win any future business.” For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited only to ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find Stadler has established release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude DART may withhold the information Stadler seeks to withhold, which we indicated, under section 552.104(a) of the Government Code.<sup>1</sup>

Stadler claims portions of its remaining information are excepted from disclosure pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Stadler raises section 552.101 in conjunction with the European Union General Data Protection Regulation. However, the Act generally does not incorporate the confidentiality or access provisions of other countries that govern the disclosure of information by entities in those countries. In this instance, Stadler generally raises the European Union General Data Protection Regulation but had made no arguments as to its applicability. Upon review, we find DART may not withhold any of the remaining information under section 552.101 on that basis.

Stadler asserts portions of its remaining information are excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) of the Government Code protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from

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

release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (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). Stadler asserts the information it indicated consists of commercial or financial information, the release of which would cause “irreparable harm to [the company.]” Upon review, we find Stadler has established the information at issue, which we indicated, constitutes commercial or financial information, the release of which would cause substantial competitive injury to Stadler. Accordingly, DART must withhold the information we indicated under section 552.110(b) of the Government Code.

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.

In summary, DART may withhold the information Stadler seeks to withhold, which we indicated, under section 552.104(a) of the Government Code. DART must withhold the information we indicated under section 552.110(b) of the Government Code. DART must release the remaining information; however, any information protected by copyright law may only be released 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kimbell Kesling  
Attorney  
Open Records Division

KK/eb

Ref: ID# 783580

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third-Party  
(w/o enclosures)