



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2019

Ms. Gloria E. Barnes
Public Information Coordinator
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2019-25446

Dear Ms. Barnes:

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# 785379 (PIR #2019-06-671).

The Capital Metropolitan Transportation Authority (the "authority") received a request for four categories of information pertaining to a specified request for proposals. 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 Luminator Mass Transit, LLC ("Luminator"). Accordingly, you state, and provide documentation showing, the authority notified Luminator 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 Luminator. We have considered the submitted arguments and reviewed the submitted information.

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. Luminator states it has competitors. Luminator states the release of portions of its information would give its competitors an advantage by allowing its

competitors to adjust their products and pricing to reflect a more favorable position in future bids. After review of the information at issue and consideration of the arguments, we find Luminator has established the release of the information at issue, which we marked, would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the information we marked under section 552.104(a) of the Government Code.¹ 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 <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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/eb

Ref: ID# 785379

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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