



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2019

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

OR2019-35028

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# 808756 (ORR# W004375).

Dallas Area Rapid Transit ("DART") received a request for a specified contract. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Herzog Transit Services, Inc. ("Herzog").¹ Accordingly, you state, and provide documentation showing, you notified Herzog of the request and its right to submit arguments to this office. *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.²

¹ We note DART did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, the interests of third parties can provide a compelling reason to overcome the presumption of openness. *See id.* §§ 552.007, .302, .352.

² We note we asked DART to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). As of the date of this letter, we have not received a response.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Herzog. Thus, we have no basis to conclude Herzog has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 any of the submitted information on the basis of any proprietary interest Herzog may have in the information. As we have received no arguments against disclosure, the submitted information must be released.

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/gw

Ref: ID# 808756

Enc. Submitted documents

c: Requestor
(w/o enclosures)