



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2020

Ms. Christina C. Doss
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2020-04153

Dear Ms. Doss:

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# 811426 (Ref. No. W004539-111219 and W004541-111219).

Dallas Area Rapid Transit ("DART") received two requests from different requestors for specified agreements. 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, Inc. ("MV Transportation"). Accordingly, you state, and provide documentation showing, you notified MV Transportation of the requests 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 received comments from MV Transportation. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-14734 (2019). In that ruling we determined, in part, DART must continue to rely on Open Records Letter No. 2018-19281 (2018) as a previous determination and withhold or release the information at issue in accordance with that ruling. For the information pertaining to solicitation number P-1019730, we have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, DART must continue to rely on Open

Records Letter No. 2019-14734 as a previous determination and withhold or release the information pertaining to solicitation number P-1019730 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 the release of its information at issue would be advantageous to its competitors. MV Transportation also states release of the information would allow competitors to underbid MV Transportation in future bidding opportunities. We note MV Transportation seeks to withhold the terms of the contract. 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 to only 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 831, at 831, 842. 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, which we have indicated, would give advantage to a competitor or bidder. Thus, we conclude DART may withhold the information we have indicated in P-2044267 under section 552.104(a) of the Government Code.¹

We note some of the remaining information may be subject to copyright law. 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

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

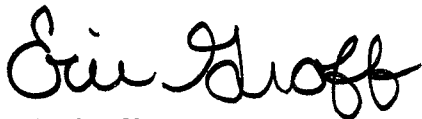
unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, DART must continue to rely on Open Records Letter No. 2019-14734 as a previous determination and withhold or release the information pertaining to solicitation number P-1019730 in accordance with that ruling. DART may withhold the information we have indicated in P-2044267 under section 552.104(a) of the Government Code. DART must release the remaining information; however, any information protected by copyright 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

Ref: ID# 811426

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

1 Third Parties
(w/o enclosures)