



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 20, 2020

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

OR2020-05471

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# 813034 (ORR W004596-120219).

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 release of the submitted information may implicate the proprietary interests of Element Markets Renewable Energy, LLC ("EMRE"). Accordingly, you state, and provide documentation showing, you notified EMRE of the request and of 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.

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-18194 (2019). In that ruling, we determined DART may withhold certain information under section 552.104 of the Government Code on behalf of EMRE and must release the remaining information. There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, with regard to the submitted information that was at issue in the previous ruling, DART may continue to rely on Open Records Letter No. 2019-18194 as a previous determination and withhold or release that information 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). However, the remaining information you have submitted was not at issue in the previous ruling. Accordingly, we will address the public availability of this information.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from EMRE explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of the remaining information would implicate the interests of EMRE, and none of the remaining information may be withheld on that basis. *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.

In summary, with regard to the submitted information that was at issue in the previous ruling, DART may continue to rely on Open Records Letter No. 2019-18194 as a previous determination and withhold or release that information in accordance with that ruling. DART 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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/gw

Ref: ID# 813034

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)