



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 13, 2020

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

OR2020-10803

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# 821335 (Ref. Nos. W004731-012120 and W004734-012120).

Dallas Area Rapid Transit ("DART") received two requests from different requestors for information pertaining to a particular request for proposals, including the awarded vendors' proposals, bid evaluation information, a list of bidders, and pricing information pertaining to each bidder. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state DART notified third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> 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

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<sup>1</sup> You state DART notified the following third parties: ACS Group; American Unit, Inc.; Bansar Technologies, Inc.; Buchanan Technologies; C&T Information Technology; Cedent Consulting, Inc.; Coolsoft, LLC; Epitec; Fidelis Companies, LLC; Infojini, Inc; Intellisoft Technologies, Inc.; MNK Infotech Inc; Novalink Solutions, LLC; 22<sup>nd</sup> Century Technologies, Inc.; Abacus Service Corporation; AMER Technology, Inc.; Ampcus Inc; Apex Systems, LLC ("Apex"); Beacon Systems, Inc.; BravoTECH; Business Control Systems, LP; BuzzClan LLC; C25 Technologist, Inc.; Comtec Consultants, Inc.; Connections IT Services; Elegant Enterprise-Wide Solutions, Inc. ("Elegant"); Empyra.com, Inc.; Esolvit, Inc. ("Esolvit"); Experis US, Inc; FlexSolv Networks, Inc.; Infocorvus LLC; innoSoul, Inc.; INSI Cloud, Inc.; LanceSoft, Inc.; Marathon Staffing Group, Inc.; Nam Technologies, Inc.; NEXUS IT Group, Inc.; Numbers Only, Inc.; St. Vincent DePaul Rehabilitation Services of Texas, Inc. d/b/a Peak Performers ("Peak Performers"); Powersolv, Inc.; PROLIM Global Corporation; RailcarRX, Inc.; Primus Global Services, Inc. ("Primus"); Seanergy Consulting Services, Inc.; SHIRO Technologies LLC; SOAL Technologies; Software Professionals, Inc. ("SPI"); Sun Technologies, Inc.; Swift Pace Solutions, Inc.; Sydata Inc.; TEKsystems; The Evolvers Group, LP; The Spearhead Group, Inc; V-Soft Consulting Group, Inc; and vTech Solution Inc.; Trigyn Technologies, Inc. ("Trigyn"); and UVS Infotech, LLC.

to raise and explain applicability of exception in certain circumstances). We have received comments from Apex, Elegant, Esolvit, Peak Performers, Primus, SPI, and Trigyn. We have considered the submitted arguments and reviewed the submitted information.

Initially, DART notes, and we agree, the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-09429 (2020). In Open Records Letter No. 2020-09429, we determined DART may withhold certain information under section 552.104(a), must withhold certain information under section 552.110(b), must withhold bank account numbers under section 552.136, and must release the remaining information. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. DART raises section 552.104 of the Government Code for the submitted information; however, we note section 552.104 does not prohibit the release of information or make information confidential. *See id.* § 552.104. Thus, with respect to the information released pursuant to Open Records Letter No. 2020-09429, DART may not now withhold the previously released information under section 552.104. We also note Elegant, Primus, and Trigyn now seek to withhold information that was previously ordered released by the prior ruling under sections 552.101 and 552.1101 of the Government Code. Because information subject to sections 552.101 and 552.1101 is deemed confidential by law, we will address the arguments under these exceptions for any previously released information. We also note since the previous ruling was issued, the law regarding sections 552.104 and 552.1101 has changed. Therefore, because the law has changed with respect to the information at issue, DART may not rely on Open Records Letter No. 2020-09429 as a previous determination and withhold any of the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Accordingly, we will consider the submitted arguments for the information that was not previously ordered released. We will also consider Elegant's arguments under section 552.101 and Primus' and Trigyn's arguments under section 552.1101 for the information that was previously ordered released.

Next, we note 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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party has a protected proprietary interest in the submitted information. *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. Accordingly, DART may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

Next, we note Apex and Elegant object to disclosure of information DART has not submitted to this office for review. This ruling does not address information that was not submitted by DART and is limited to the information DART has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find DART has established the release of the information at issue would harm its interests by providing an advantage to a competitor or bidder in a particular competitive situation that is set to reoccur or for which DART has demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Thus, we conclude DART may withhold the information that was not ordered released in Open Records Letter No. 2020-09429, which we have indicated, under section 552.104(a) of the Government Code.<sup>2</sup>

Primus and Trigyn assert portions of their information at issue, which were previously ordered released, are excepted from disclosure under section 552.1101 of the Government Code. Section 552.1101 provides, in relevant part:

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Gov't Code § 552.1101(a). Primus and Trigyn assert disclosure of their information would reveal an individual approach to pricing and give advantage to their competitors. Upon review, we find Primus and Trigyn have failed to provide the specific factual evidence necessary to withhold any of the information at issue under section 552.1101(a), and DART may not withhold it on that basis.

We understand Elegant to argue some of its remaining information, which was ordered released pursuant to Open Records Letter No. 2020-09429, is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code. § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990).] We also note an individual's name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. *See* Open Records Decision Nos. 554 (1990), 448 (1986). Upon review, we find Elegant has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, DART may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

assembled, or maintained by or for a governmental body is confidential.”<sup>3</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find DART must withhold any bank account numbers in the remaining information under section 552.136 of the Government Code.

In summary, DART may withhold the information that was not ordered released in Open Records Letter No. 2020-09429, which we have indicated, under section 552.104(a) of the Government Code. DART must withhold any bank account numbers in the remaining information under section 552.136 of the Government Code. 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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/mo

Ref: ID# 821335

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

57 Third Parties  
(w/o enclosures)

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<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).