



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 12, 2020

Mr. Jacob LaBorde  
Public Information Coordinator  
Capital Metro Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR2020-20214

Dear Mr. LaBorde:

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# 839516 (PIR Nos. 2020-05-921, 2020-06-931, and 2020-06-943).

Capital Metro Transportation Authority ("Capital Metro") received three requests from different requestors for information pertaining to transit advertising services. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests Adposure; Intersection Media LLC; Lamar Transit LLC ("Lamar"); Mesmerize; and Vector Media Holding. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 correspondence from Adposure, Lamar, and Mesmerize.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

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 the remaining third parties explaining why the

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<sup>1</sup> We note Mesmerize makes no arguments against disclosure of its information at issue and raises no exceptions to disclosure under the Act.

submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, Capital Metro may not withhold any portion of the submitted information related to those remaining third parties on the basis of any proprietary interest they may have in the information.

Next, we note Lamar seeks to withhold information not submitted to this office by Capital Metro. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by Capital Metro, this ruling does not address this information and is limited to the information submitted as responsive by Capital Metro.

Adposure raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information 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) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3.* Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code 552.104(a). Therefore, we do not address Adposure’s arguments under section 552.104 of the Government Code.

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Adposure argues portions of its information consist of trade secrets subject to section 552.110(b). Upon review, we find Adposure has demonstrated portions of the information at issue constitute trade secrets. Accordingly, Capital Metro must withhold the information we marked under section 552.110(b) of the Government

Code. However, we find Adposure has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, Capital Metro may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Section 552.110(c) of the Government Code excepts from disclosure “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(c). Lamar argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Lamar has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, to the extent the customer information we marked is not publicly available on Lamar’s website, Capital Metro must withhold the customer information we marked under section 552.110(c) of the Government Code. However, to the extent the customer information at issue is publicly available on Lamar’s website, we find the city may not withhold the customer information at issue under section 552.110(c) of the Government Code. Regardless, Capital Metro must withhold the remaining information we marked and indicated under section 552.110(c) of the Government Code. Additionally, we find Lamar has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, Capital Metro may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.1101 of the Government Code 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;
    - (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.

*Id.* § 552.1101(a). Adposure and Lamar assert disclosure of some of their information would reveal an individual approach to their work, organizational structure, staffing, internal operations, processes, and pricing methodologies and give advantage to a competitor. Upon review, we find Lamar has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, Capital Metro must withhold the information we marked and indicated under section 552.1101 of the Government Code. However, we find Adposure and Lamar have failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a) of the Government Code, and Capital Metro may not withhold it on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> *See id.* § 552.130. Accordingly, Capital Metro must withhold the visible license plates and registration stickers under section 552.130 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. We understand Lamar to assert the information it marked within the W-9 form is confidential under section 6103(a) of title 26 of the United States Code, which is encompassed by section 552.101 of the Government Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). However, W-9 tax forms are requests for taxpayer identification numbers and do not fall within the definition of "tax return information." Therefore, the Capital Metro may not withhold any of the W-9 tax form at

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<sup>2</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)

issue under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

In summary, Capital Metro must withhold the information we marked under section 552.110(b) of the Government Code. Capital Metro must withhold the information we marked and indicated section 552.110(c) of the Government Code, to the extent the customer information at issue is publicly available on Lamar's website. Capital Metro must withhold the information we marked and indicated under section 552.1101 of the Government Code. Capital Metro 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,

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/mo

Ref: ID# 839516

Enc. Submitted documents

c: Requestor  
(w/o enclosures)