



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2020

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

OR2020-21482

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# 839370 (Ref. No. W005013-052120).

Dallas Area Repaid Transit ("DART") received a request for licensing agreements between certain types of entities and DART pertaining to rights of way during a stated period of time. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of the following third parties: Cedbridge Acquisition, L.P. d/b/a Suddenlink Communications; Epic Dallas Hotel, L.P.; ExteNet Systems, Inc.; Frontier Southwest, Inc.; Grayson Collin Electric Cooperative, Inc.; Jefferson Routh Creek, L.P.; MCI Metro Access Transmission Services Corp., d/b/a Verizon Access Transmission Services; Sprint Communications Company, L.P. ("Sprint"); Suddenlink Communications; Unite Private Networks, LLC; and Zayo Fiber Solutions, LLC.¹ Accordingly, you state, and provide documentation demonstrating, DART notified these interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information 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 comments on behalf of

¹ We note in a letter dated July 30, 2020, 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 that 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).

Sprint. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) 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 information at issue should not be released. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, DART may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

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). Sprint asserts its information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find Sprint has demonstrated portions of the information at issue, which we marked, constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, DART must withhold the information we marked under section 552.110(c) of the Government Code.² However, we find Sprint has failed to provide specific factual evidence demonstrating any of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, DART may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.1101(a) of the Government Code excepts from disclosure "information 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*[" *Id.* § 552.1101(a) (emphasis added). Upon review, we find Sprint has failed to demonstrate the applicability of section 552.1101(a) to its remaining information. Therefore, DART may not withhold any portion of the remaining information under section 552.1101(a) of the Government Code.

Section 552.136(b) of the Government Code provides, "[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 government body is confidential."³ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, DART

² As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

³ 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).

must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code.

We note some of the remaining information appears to be protected by copyright. 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 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 withhold the information we marked under section 552.110(c) of the Government Code. DART must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code. DART must release the remaining information; however, any information subject to 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 839370

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 11 Third Parties
(w/o enclosures)