



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 29, 2020

Mr. Joseph J. Gorfida, Jr.  
Counsel for the Denton County Transportation Authority  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2020-24438

Dear Mr. Gorfida:

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# 846825 (ORR# 116818).

The Denton County Transportation Authority (the "authority"), which you represent, received a request for all proposals, pricing materials, and supporting documentation pertaining to a specified solicitation. Although the authority takes no position regarding whether the submitted information is excepted from disclosure under the Act, the authority informs us its release may implicate the proprietary interests of the following third parties: Dashboard Story, Inc., d/b/a Duet; DemandTrans Solutions, Inc.; Moovit, Inc. ("Moovit"); River North Transit, LLC; Routematch Software, Inc.; and Spare Labs, Inc. ("Spare"). Accordingly, the authority states, and provides documentation showing, it notified these third parties of the request for information and of their 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 received comments from Moovit and Spare. We have considered the submitted arguments and reviewed the submitted 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 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 only received comments from Moovit and Spare explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the authority may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Moovit and Spare each raise section 552.104 of the Government Code for a portion of their 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 arguments of Moovit and Spare under section 552.104.

Moovit raises section 552.110(b) of the Government Code for a portion of its information.<sup>1</sup> Section 552.110(b) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Moovit argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Moovit has demonstrated portions of the information at issue, including its customer information, constitute trade secrets. Accordingly, the authority must withhold

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<sup>1</sup> Although Moovit cites to former section 552.110(a) of the Government Code in its brief, we understand it to raise current section 552.110(b) of the Government Code based on the substance of its arguments.

the information we marked under section 552.110(b) of the Government Code; however, to the extent Moovit's customer information is publicly available on its website, it may not be withheld under section 552.110(b) of the Government Code. Nonetheless, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b). Therefore, the authority may not withhold any of the remaining information at issue under section 552.110(b).

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.<sup>2</sup> *See id.* § 552.130. The remaining information contains motor vehicle record information. However, we are unable to determine whether the information at issue constitutes actual motor vehicle record information for purposes of section 552.130, or whether it is fictitious motor vehicle record information created as a sample. Therefore, we rule conditionally. To the extent the submitted motor vehicle record information constitutes actual motor vehicle record information, the authority must withhold the license plate information we indicated under section 552.130 of the Government Code. To the extent the submitted motor vehicle record information consists of fictitious motor vehicle record information, the authority may not withhold it on that ground.

Section 552.136 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 governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See Open Records Decision No. 684 at 9 (2009)*. Accordingly, the authority must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information at issue may 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, the authority must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent Moovit's customer information is publicly available on its website, it may not be withheld under section 552.110(b) of the

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<sup>2</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

Government Code. To the extent the submitted motor vehicle record information constitutes actual motor vehicle record information, the authority must withhold the license plate information we indicated under section 552.130 of the Government Code. The authority must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The authority 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/mo

Ref: ID# 846825

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: Third Parties  
(w/o enclosures)