



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 24, 2020

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

OR2020-29403

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# 855361 (Ref. No. 2020-08-986).

Capital Metropolitan Transportation Authority (the "authority") received a request for three categories of information pertaining to a specified contract during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of MV Transportation, Inc. ("MV"). Accordingly, you state, and provide documentation showing, you notified MV 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. *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 considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the authority's obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code § 552.301(b)*. You state the authority received the request for information on September 2, 2020. You inform us the authority was closed for business on September 7, 2020. We note this office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Thus, the authority's ten-business-day deadline was September 17, 2020. However, the envelope in which the

authority provided the information required by section 552.301(b) was meter-marked September 18, 2020. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the authority failed to comply with the requirements of section 552.301 in requesting a decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). You claim sections 552.103 and 552.111 of the Government Code for the submitted information. We find you have failed to establish a compelling reason to address these exceptions. However, we note third party interests can provide a compelling reason to withhold information from disclosure.

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 ruling, we have not received comments from MV explaining why the submitted information should not be released. Thus, we have no basis to conclude MV has 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, the authority may not withhold the submitted information on the basis of any proprietary interest MV may have in the information. The authority must release the submitted 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/be

Ref: ID# 855361

Enc. Submitted documents,

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)