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ATTORNEY GENERAL OF TEXAS

January 3, 2022

Mr. Wayne T. Rife
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The Rife Law Firm
3205 Earl Rudder Freeway South
College Station, Texas 77845

OR2022-00083

Dear Mr. Rife:

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# 923288.

The Hill Country Transit District (the "district"), which you represent, received a request for (1) the contract with the district's current paratransit scheduling, planning, and dispatching technology software provider, (2) the contract with the district's paratransit operator, (3) the number of weekday vehicles used to provide paratransit revenue service for a specified time period, and (4) the average number of weekday trips for paratransit service for a specified time period. The district states it does not have information responsive to categories two, three, and four of the request.¹ Although the district takes no position regarding whether the submitted information is excepted from disclosure under the Act, the district states it notified an interested third party of the request for information and of its 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

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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 Trapeze Software Group, Inc. d/b/a TripSpark Technologies (“TripSpark”). We have considered the submitted arguments and reviewed the submitted information.

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* Gov’t Code § 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). 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). TripSpark argues some of its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c).² Upon review, we find TripSpark has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we marked under section 552.110(c) of the Government Code.³ Additionally, we find TripSpark has demonstrated the remaining information at issue constitutes trade secrets. Accordingly, the district must withhold the information we marked under section 552.110(b) of the Government Code. As no further arguments against disclosure are made, the district must release the remaining information.

² Although TripSpark cites to former sections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand it to raise current sections 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 923288

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Third Party
(w/o enclosures)