



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 21, 2022

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
Post Office Box 61429
Houston, Texas 77208-1429

OR2022-01786

Dear Ms. Hojem:

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# 926588 (Ref. No. 2021-0615).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for the bid proposals and contract pertaining to request for proposals number 4019000145. The authority states it released some information. Although the authority takes no position as to whether the submitted information is excepted under the Act, the authority states release of the submitted information may implicate the proprietary interests of Bytemark, Inc.; IBI Group; DoubleMap, Inc.; Mobile Encryption Technologies, Inc. (MET); Moovit, Inc. ("Moovit"); and Trillium Solutions, Inc. ("Trillium"). 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 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 received comments from Moovit and Trillium. We have reviewed the submitted arguments and the submitted information.¹

Initially, we note Moovit argues against the release of information that was not submitted by the authority. This ruling does not address information that was not submitted by the authority and is limited to the information the authority has submitted for our review. *See*

¹ We note the submitted information includes the requestor's proposal. As we assume the requestor does not seek access to the requestor's own proposal, we do not address the public availability of that information.

Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Next, we note some of the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2021-07771 (2021). In Open Records Letter No. 2021-07771, we determined the authority must withhold all insurance policy numbers under section 552.136 of the Government Code and release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007. We note although Moovit raises section 552.104 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the authority may not now withhold the information previously ordered released in Open Records Letter No. 2021-07771 under section 552.104 of the Government Code. We also note Moovit and Trillium now seek to withhold information that was previously ordered released by the prior ruling under sections 552.110 and 552.1101 of the Government Code. Because information subject to sections 552.110 and 552.1101 is deemed confidential by law, we will address Moovit's and Trillium's arguments under these exceptions for any previously released information. Nevertheless, except with regard to Moovit's and Trillium's claims under section 552.110 and 552.1101, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based with respect to the remaining information at issue. Accordingly, except with regard to Moovit's and Trillium's claims under sections 552.110 and 552.1101, for the submitted information that is identical to the information previously requested and ruled upon by this office, we conclude the authority must continue to rely on Open Records Letter No. OR2021-07771 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, 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 remaining interested third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining interested third party has 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). Accordingly, the authority may not withhold the submitted

information on the basis of any proprietary interest any remaining interested third party may have in the 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 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). 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). Moovit and Trillium argue some of the submitted information is subject to section 552.110 of the Government Code. However, some of Moovit’s and Trillium’s information at issue was previously ordered released pursuant to Open Records Letter No. 2021-07771. Since the issuance of the previous ruling, Moovit and Trillium have not disputed this office’s conclusions regarding the release of the information at issue. In this regard, we find Moovit and Trillium have not taken any measures to protect its information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause Trilium substantial harm. *See id.* § 552.110. Accordingly, we conclude the authority may not withhold the information at issue under section 552.110 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). Trillium asserts some of its information at issue is excepted from disclosure under section 552.1101(a). As noted above, the information at issue was previously ordered released in Open Records Letter No. 2021-07771, and Trillium did not object to release of the information at issue at that time. Since the issuance of the previous ruling, Trillium has not disputed this office's conclusions regarding the release of the information at issue. In this regard, we find Trillium has not taken any measures to protect the information at issue in order for this office to conclude the information now qualifies as proprietary information for purposes of section 552.1101. Therefore, the authority may not withhold any of the information at issue under section 552.1101 of the Government Code.

In summary, for the submitted information that is identical to the information previously requested and ruled upon by this office, we conclude the authority must continue to rely on Open Records Letter No. OR2021-07771 as a previous determination and withhold or release the identical information in accordance with that ruling. The authority 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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/ba

Ref: ID# 926588

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)