



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2022

Mr. Gil R. Garcia
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2022-02003

Dear Mr. Garcia:

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# 926872 (Ref. No. W005989-110121).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to a specified bidding opportunity. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of CTJ Maintenance, Inc. ("CTJ") and L&J Staffing Solutions d/b/a North America Select Services ("NASS"). Accordingly, you state, and provide documentation showing, you notified these third parties 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 received comments from CTJ. 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 NASS explaining why the submitted information should not be released. Therefore, we have no basis to conclude NASS 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, DART may not

withhold the submitted information on the basis of any proprietary interest NASS may have in the information.

CTJ raises section 552.110 of the Government Code for some of its information at issue. Section 552.110(b) 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). Section 552.110(c) of the Government Code states:

Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

Id. § 552.110(c). 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). Upon review, we find CTJ has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, DART must withhold the information we marked and CTJ’s customer information under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by CTJ, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110(c).¹ However, we find some of the remaining information is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Additionally, we find CTJ has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information constitutes commercial or financial information, the release of which would result in substantial competitive harm, or is a trade secret. Therefore, DART may not withhold any portion of the remaining information under section 552.110 of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

- (a) Except as provided by Section 552.0222, 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

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

Id. § 552.1101(a), (b). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). CTJ asserts disclosure of some of the remaining information would reveal its individual approach to work, staffing, or pricing methodology and give advantage to a competitor. However, we find some of the information at issue is subject to section 552.0222(b) of the Government Code and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find CTJ has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a). Therefore, DART may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

Section 552.136 of the Government Code states “[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”). Thus, DART must withhold the bank account numbers in the remaining information under section 552.136 of the Government Code.

In summary, DART must withhold the information we marked and CTJ’s customer information under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by CTJ, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110(c). DART must withhold the bank account numbers in the remaining information under section 552.136 of the Government Code. DART 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,

Gerald Arismendez
Assistant Attorney General
Open Records Division

GA/mo

Ref: ID# 926872

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/ o enclosures)