



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2022

Mr. Albert E. Tovar
Attorney
VIA Metropolitan Transit
123 North Medina Street
San Antonio, Texas 78207

OR2022-03222

Dear Mr. Tovar:

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# 929136.

VIA Metropolitan Transit ("VIA") received a request for a specified proposal submitted by the DreamOn Group ("DreamOn"). Although VIA takes no position as to whether the submitted information is excepted under the Act, VIA states release of the submitted information may implicate the proprietary interests of DreamOn. Accordingly, VIA states, and provides documentation showing, it notified DreamOn 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 (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 DreamOn. We have reviewed the submitted information and the submitted arguments.

DreamOn raises section 552.101 of the Government Code for the submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, DreamOn has not pointed to any confidentiality provision, nor are we aware of any, that would make any of the submitted information confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, VIA may not withhold any of the submitted information under section 552.101 of the Government Code.

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.” 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). Section 552.1101(a) of the Government Code provides, in relevant part, as follows:

[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 contract 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) organization 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). DreamOn asserts sections 552.110 and 552.1101 for the submitted information. Upon review, we find DreamOn has failed to provide specific factual

evidence demonstrating any portion of the information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Additionally, we find DreamOn has failed to provide the specific factual evidence necessary to withhold any portion of the information at issue under section 552.1101(a). Therefore, the trust may not withhold any of the information at issue under section 552.110 or section 552.1101 of the Government Code.

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 A. Arismendez
Assistant Attorney General
Open Records Division

GAA/ba

Ref: ID# 929136

c: Requestor