



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 2, 2022

Mr. Jacob LaBorde  
Public Information Coordinator  
Capital Metropolitan Transit Authority  
2910 East 5th Street  
Austin, Texas 78702

OR2022-03259

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# 926837 (Ref. No. 2021-11-1195).

The Capital Metropolitan Transit Authority (the "authority") received a request for final pricing and any video interviews from a specified request for proposals.<sup>1</sup> Although you raise no exceptions to disclosure, you state the release of the submitted information may implicate the proprietary interests of Jay-Reese Contractors, Inc. ("Jay-Reese"); Modern Railway Systems ("MRS"); and R. J. Corman Railroad Services, Inc. ("RJC"). 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 Jay-Reese and MRS. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> You state the authority sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note you have submitted information beyond the final pricing and interviews requested. This additional information is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the authority is not required to release such information in response to this request.<sup>2</sup>

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 RJC explaining why the submitted information should not be released. Therefore, we have no basis to conclude RJC 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 RJC may have in the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Jay-Reese argues its information is excepted from disclosure pursuant to section 552.101 in conjunction with section 252.049 of the Local Government Code. Section 252.049 provides:

- (a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.
- (b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

Local Gov't Code § 252.049(a), (b). This provision merely duplicates the protection section 552.110 of the Government Code provides to trade secret and commercial or financial information. Therefore, we will address Jay-Reese's arguments with respect to section 252.049 of the Local Government Code under sections 552.110 and 552.1101 of the Government Code.

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<sup>2</sup> As we are able to make this determination, we need not address the arguments against disclosure of this information.

Jay-Reese also raises section 552.104 of the Government Code. Section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” Gov’t Code § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code § 552.104(a). Therefore, we do not address Jay-Reese’s argument under section 552.104 of the Government Code for the information at issue.

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). Additionally, 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). Jay-Reese and MRS argue some of the responsive information consists of trade secrets subject to section 552.110(b) and of commercial or financial information subject to section 552.110(c). Upon review, we find MRS has demonstrated some of its information, which we indicated, constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the authority must withhold the information we indicated under section 552.110(c) of the Government Code.<sup>3</sup> However, we find Jay-Reese has failed to provide specific factual evidence demonstrating any portion of its information is a trade secret or constitutes commercial or financial information, the release

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

of which would result in substantial competitive harm. Therefore, the authority may not withhold any of the remaining information at issue under section 552.110(b) or 552.110(c) 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). Jay-Reese argues disclosure of its information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing, and give advantage to a competitor. Upon review, we find Jay-Reese has failed to provide specific factual evidence demonstrating its information is subject to section 552.1101(a). Therefore, the authority may not withhold any of the remaining information at issue under section 552.1101(a).

In summary, the authority must withhold the MRS information we indicated under section 552.110(c) of the Government Code. The authority must release the remaining responsive 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/jxd

Ref: ID# 926837

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)