



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 8, 2022

Mr. Brian O'Reilly  
Counsel for the Central Texas Regional Mobility Authority  
Locke Lord, LLP  
600 Congress Avenue, Suite 2200  
Austin, Texas 78701

OR2022-03345

Dear Mr. O'Reilly:

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# 927689 (Reference Nos. 466 and 467).

The Central Texas Regional Mobility Authority (the "authority"), which you represent, received two requests from the same requestor for information pertaining to a specified request for qualifications. The authority claims the submitted information is excepted from disclosure under sections 552.103, 552.104, and 552.111 of the Government Code. Additionally, the authority states release of the submitted information may implicate the proprietary interests of the following third parties: Emovis US, Inc.; Electronic Transaction Consultants, LLC ("ETC"); Kapsch TrafficCom USA, Inc. ("Kapsch"); Parsons/Neology Joint Venture; SICE-ACS Joint Venture; and TransCore, LP ("TransCore"). Accordingly, the authority states, and provides documentation showing, it notified these interested third parties of the requests for information and of their right to submit arguments to this office. *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 ETC, Kapsch, and TransCore. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor.<sup>1</sup> *See Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).*

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<sup>1</sup> Although the requestor asserts ETC failed to comply with section 552.305(e) of the Government Code, we note a violation of section 552.305 does not result in the legal presumption the requested information is public under section 552.302 of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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.” *Id.* § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the authority has established the release of the information at issue would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Accordingly, we conclude the authority may withhold the submitted information under section 552.104(a) of the Government Code.<sup>2</sup>

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/mo

Ref: ID# 927689

c: Requestor

cc: 6 Third Parties

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.