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ATTORNEY GENERAL OF TEXAS

February 25, 2022

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

OR2022-05888

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# 932530 (ORR# W006057-120721).

Dallas Area Rapid Transit ("DART") received a request for six categories of information pertaining to a specified request for proposals. Although DART takes no position as to whether the submitted information is excepted under the Act, DART states release of the submitted information may implicate the proprietary interests of CTJ Maintenance Inc. ("CTJ"); Hallcon Corporation ("Hallcon"); and L&J Staffing Solutions ("L&J"). Accordingly, DART states, and provides documentation showing, it notified these third parties of the request for information and of their rights 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 Hallcon. We have reviewed the submitted information and submitted arguments.

Initially, we note some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-02003 (2022). In this ruling, we determined DART must (1) withhold certain information under section 552.110(c) of the Government Code, (2) withhold bank account numbers under section 552.136 of the Government Code, and (3) release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information at issue is identical to the information previously requested and ruled upon by this office, DART must

continue to rely on Open Records Letter No. 2022-02203 as a previous determination and withhold or release the identical information in accordance with this 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider the submitted arguments for the submitted information not subject to the previous ruling.

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 the remaining notified third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude either of the remaining third parties 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 information at issue on the basis of any proprietary interest either of the remaining third parties 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 states:

- (c) 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). Hallcon argues some of its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find Hallcon has demonstrated portions of the information at issue constitute trade secrets and portions of the information constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, DART must withhold the information we marked under section

552.110 of the Government Code; however, to the extent the marked customer information is made available to the public by Hallcon, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110.¹

In summary, DART must continue to rely on Open Records Letter No. 2022-02003 as a previous determination and withhold or release the identical information in accordance with this ruling. DART must withhold the information we marked under section 552.110 of the Government Code; however, to the extent the marked customer information is made available to the public by Hallcon, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110. The remaining information must be released.

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,

Colin Henry
Attorney
Open Records Division

CEH/jxd

Ref: ID# 932530

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)

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