



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 28, 2022

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

OR2022-06046

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# 932948 (Ref. No. W006050-120621).

Dallas Area Rapid Transit ("DART") received a request for a specified contract between DART and Stadler US, Inc. ("Stadler"). You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Stadler. Accordingly, you state, and provide documentation showing, you notified Stadler 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 Stadler. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2021-13899 (2021). In that ruling, we determined to the extent the customer information is publicly available the company's website, DART must withhold the marked information under section 552.110(c) of the Government Code and must release the remaining information. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records

Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, DART may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. However, because section 552.101 of the Government Code protects information made confidential by law, we will address DART's argument for some of the information that was previously released. Furthermore, with respect to the information previously withheld under section 552.110(c) of the Government Code in Open Records Letter No. 2021-13899, there is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude DART must continue to rely on Open Records Letter No. 2021-13899 as a previous determination and withhold the information at issue in accordance with that ruling.<sup>1</sup> *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).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.181 of the Government Code provides as follows:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

*Id.* § 418.181. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You indicate, and we agree, the information at issue relates to critical infrastructure for purposes of section 418.181 of the Government Code. *See generally id.* § 421.001(2) (defining "critical infrastructure" to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation"). You state release of this information would reveal critical locations and create security risks that criminals or terrorists could use to their advantage. Based on

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<sup>1</sup> As we are able to make this determination, we need not address the arguments against disclosure of this information.

your representations and our review, we find DART has demonstrated release of the information at issue would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, DART must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.<sup>2</sup>

In summary, DART must continue to rely on Open Records Letter No. 2019-01764 and withhold the information at issue under section 552.110(c) of the Government Code in accordance with that ruling. DART must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 418.181 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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/be

Ref: ID# 932948

c: Requestor

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<sup>2</sup> As our ruling is dispositive, we need not address your argument against disclosure of this information.