



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2022

Ms. Detra Whitmore
Vice President, Customer Experience
Fort Worth Transportation Authority
801 Cherry Street, Suite 850
Fort Worth, Texas 76012

OR2022-07338

Dear Ms. Whitmore:

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# 935647 (TMOR2021-054).

The Fort Worth Transportation Authority (the "authority") received a request for information related to a specified request for proposals, including the related contract, scoring documents, and board action items.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of River North Transit, LLC ("Via"). Accordingly, you state, and provide documentation showing, you notified Via 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).

Initially, we note some of the submitted information was the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2020-20955 (2020) and 2021-08756 (2021). In Open Records Letter No. 2020-20955, we determined the authority must release the submitted information; however, any information that is subject to copyright may be released only in accordance with copyright law. In Open

¹ We note the authority did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because third party interests are at stake, we will consider whether the submitted information must be withheld under the Act based on third party interests. *See id.* §§ 552.007, .302, .352.

Records Letter No. 2021-08756, we determined the authority must withhold the information we marked under section 552.110(c) of the Government Code and must release the remaining information. We understand the law, facts, and circumstances on which the prior rulings were based have not changed. Thus, the authority must continue to rely on Open Records Letter Nos. 2020-20955 and 2021-08756 as previous determinations and withhold or release the identical information in accordance with those rulings. *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). However, we will consider whether the remaining information not subject to the previous rulings is excepted from disclosure.

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 Via explaining why the remaining information should not be released. Therefore, we have no basis to conclude Via has a protected proprietary interest in the remaining 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 remaining information on the basis of any proprietary interest Via may have in the information.

In summary, the authority must continue to rely on Open Records Letter Nos. 2020-20955 and 2021-08756 as previous determinations and withhold or release the identical information in accordance with those rulings. The authority 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/jm

Ref: ID# 935647

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)