



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2022

Mr. Jeffrey W. Giles
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2022-21796

Dear Mr. Giles:

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# 961989 (Reference No. W006441).

Dallas Area Rapid Transit ("DART") received a request for a specified contract. DART claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, DART states release of the submitted information may implicate the proprietary interests of Metropolitan Security Services, Inc. d/b/a Walden Security Services ("Walden"). Accordingly, DART states, and provides documentation showing, it notified Walden of the request for information and of its 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 considered the claimed exception and reviewed the submitted information.

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. 2022-05586 (2022). In that ruling, we determined DART must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code and must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law. We have no indication the law, facts, or circumstances on which the

prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude DART must rely on Open Records Letter No. 2022-05586 as a previous determination and withhold the identical information in accordance with that ruling.¹ *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, DART now seeks to withhold information that may have been released in Open Records Letter No. 2022-05586. We note the Act does not permit the selective disclosure of information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, DART may not now withhold the previously released information, unless its release is expressly prohibited by law or the information is confidential by law. However, because section 552.101 of the Government Code makes information confidential under the Act, we will address its applicability to the submitted information.

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) of the Government Code 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 Walden explaining why the information at issue should not be released. Thus, we have no basis to conclude Walden 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). Therefore, DART may not withhold the submitted information on the basis of any proprietary interest Walden may have in the information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act, 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 418.182(a) of the Government Code provides, in part, the following:

¹As we are able to make this determination, we need not address the argument against disclosure of this information.

[I]nformation . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may be related to a security system does not make the information *per se* confidential under section 418.182. *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 confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

DART states the submitted information “includes a statement of work that describes technical details of mobile surveillance devices that . . . are part of DART’s security system” used to protect public property from terrorism or related criminal activity. DART represents release of the information at issue would “identify vulnerabilities of the security system, including the zoom capabilities, low-light capabilities, and resolution of the recordings.” Based upon these representations and our review of the information at issue, we conclude DART has demonstrated portions of the information at issue fall within the scope of section 418.182(a). Accordingly, DART must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. However, we find DART has failed to demonstrate any of the remaining information at issue relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity for the purposes of section 418.182. Therefore, we find DART has failed to demonstrate the applicability of section 418.182 to the remaining information at issue, and DART may not withhold it under section 552.101 of the Government Code on that basis.

We note some of the remaining information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude DART must rely on Open Records Letter No. 2022-05586 as a previous determination and withhold the identical information in accordance with that ruling. DART must withhold the information we

marked under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. DART must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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/be

Ref: ID# 961989

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: 1 Third Party
(w/o enclosures)