



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2022

Mr. Jeffrey Giles
Senior Assistant General Counsel
DART
P.O. Box 660163
Dallas, Texas 75866

OR2022-23171

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# 963936 (DART ORR W006450-051922).

Dallas Area Rapid Transit ("DART") received a request for a specified contract.¹ 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 Archer Western Herzog, 4.0, Joint Venture ("Archer"). Accordingly, DART states, and provides documentation showing, it notified Archer of the request for information and of its right to submit arguments to this office as to why the requested 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 Archer. We have considered the submitted arguments.

We must address DART's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. In pertinent part, section 552.301(e) requires the governmental body to submit to the attorney general the specific information that the governmental body seeks to withhold, or representative samples if the information is voluminous, not later than the fifteenth business day after the

¹ As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office.

date of the receipt of the request. Gov't Code § 552.301(e)(1). As of the date of this letter, DART has not submitted to this office a copy of the written request for information or a copy or representative sample of the information requested. Consequently, we find DART failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Although Archer raises exceptions to disclosure, because DART has not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

Ref: ID# 963936

c: Requestor

1 Third Party