



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2022

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

OR2022-26159

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# 969168 (DART ORR W006513-061522)

Dallas Area Rapid Transit ("DART") received a request for information pertaining to a specified solicitation. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified First Transit, Inc. ("FT") and MV Transportation, Inc. ("MV") of the request for information and of their 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 FT. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you did not submit the requested scoring information for our review. Thus, to the extent any information responsive to this portion of the request existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 MV explaining why its information should not be released. Therefore, we have no basis to conclude MV 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 any of the information at issue on the basis of any proprietary interest MV may have in it.

FT raises section 552.110 of the Government Code for some of its information. Section 552.110(b) states, "[e]xcept as provided by [s]ection 552.0222, 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:

Except as provided by Section 552.0222, 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Upon review, we find FT has demonstrated portions of the information at issue constitute trade secrets. Accordingly, to the extent the customer information at issue is made available to the public by FT, including but not limited to on its website or social media accounts, DART must withhold FT's customer information under section 552.110(b) of the Government Code. Additionally, we find FT has demonstrated portions of its information, a representative sample of which we marked, constitute commercial or financial information, the release of which would cause substantial competitive harm. Thus, DART must withhold the types of information we marked under section 552.110(c) of the Government Code. However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Additionally, we find FT has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in

substantial competitive harm. Therefore, DART may not withhold any of the remaining information at issue under section 552.110 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 969168

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)