



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 12, 2022

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

OR2022-27780

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# 971643 (ORR# W006534-062722).

Dallas Area Rapid Transit ("DART") received a request for the submitted proposals for a specified solicitation. 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 Cambridge Systematics, Inc. ("Cambridge"); Cubic Transportation Systems; Moovit, Inc.; and Object Technology Solutions, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the 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 Cambridge. We have reviewed the submitted information and considered the submitted arguments.

Initially, 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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the

remaining third parties have protected proprietary interests 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 the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

*Id.* § 552.1101(a). Cambridge asserts disclosure of some of its information would reveal an individual approach to work, staffing, and internal operations and give advantage to a competitor. Upon review, we find Cambridge has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, DART must withhold the customer information we have marked under section 552.1101 of the Government Code; however, to the extent Cambridge's customer information is made available to the public by Cambridge, including but not limited to on its website or social media accounts, it may not be withheld under section 552.1101.<sup>1</sup> However, we find Cambridge has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and DART may not withhold it on that basis.

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<sup>1</sup> In this instance, as our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.110(b) of the Government Code states “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). Cambridge argues some of its remaining information at issue consists of trade secrets subject to section 552.110(b). However, upon review, we find Cambridge has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, DART may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”<sup>2</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, DART must withhold the bank account numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining materials 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, DART must withhold the customer information we have marked under section 552.1101 of the Government Code; however, to the extent Cambridge’s customer information is made available to the public by Cambridge, including but not limited to on its website or social media accounts, it may not be withheld under section 552.1101. DART must withhold the bank account numbers within the remaining information under section 552.136 of the Government Code. DART must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Colin Henry  
Attorney  
Open Records Division

CEH/jm

Ref: ID# 971643

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)