



March 27, 2001

Mr. Roland Castañeda
General Counsel
Dallas Area Rapid Transit
P. O. Box 660163
Dallas, Texas 75266-0163

OR2001-1203

Dear Mr. Castañeda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145317.

The Dallas Area Rapid Transit ("DART") received a request for a copy of DART's most recent Request for Proposal ("RFP") and proposals submitted to DART to provide advisory leasing services. We assume that you have released a copy of the RFP. You advise this office that the requested information involves information that the vendors have noted as confidential and proprietary in nature. We assume that you have notified the vendors, CIBC World Markets ("CIBC"), Credit Suisse First Boston ("CFSB"), and Banc of America Leasing & Capital, L.L.C. ("BALCAP") of the request in accordance with the requirements in section 552.305(d). *See Gov't Code § 552.305(d)* (providing that governmental body make a good faith attempt to notify the interested party about the request and include a statement, in the form prescribed by the attorney general, that the party is entitled to submit briefing to the attorney general); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to the Public Information Act in certain circumstances).¹

We have received a letter from the requestor withdrawing the request as it relates to any information submitted to DART by CIBC or any of its affiliates. We have also received a letter from CIBC stating that as the request for its information has been withdrawn it is not submitting a brief. Therefore, we conclude that the request for CIBC's proposal has been

¹The prescribed form can be found in the appendix of the 2000 Public Information Handbook which can also be found on the internet at www.oag.state.tx.us.

withdrawn. As of the date of this letter, neither CFSB nor BALCAP have submitted to this office reasons explaining why the requested information should not be released. Therefore, we have no basis to conclude that the proposals are excepted from disclosure. See Gov't Code § 552.110(b)(to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Thus, DART must release the proposals of CFSB and BALCAP to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

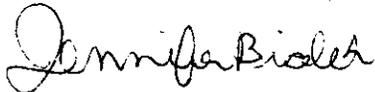
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 145317

Encl. Submitted documents

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