



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2009

Ms. Pauline E. Higgins
Senior Vice President and General Counsel
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2009-06748

Dear Ms. Higgins:

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# 344427 (MTA No. 2009-0116).

The Metropolitan Transit Authority of Harris County ("Metro") received a request for 11 categories of information concerning a contract with Parsons Transportation Group ("PTG") and related matters. You claim that information responsive to parts of the request is excepted from disclosure under sections 552.103, 552.104, 552.106, 552.110, and 552.111 of the Government Code. You also believe that the information in question implicates PTG's proprietary interests. You notified PTG of this request for information and of its right to submit arguments to this office as to why the information should not be released.¹ PTG has submitted arguments on behalf of itself, CAF USA, Inc., Houston Rapid Transit, and Veolia Transportation, Inc. We have considered all of the submitted arguments and reviewed the submitted information. We assume that Metro has released any other information that is responsive to the instant request, to the extent that such information existed when Metro received the request. If not, then any such information must be released immediately.² See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²We note that the Act does not require Metro to release information that did not exist when it received this request, create responsive information, or obtain information that is not held by or on behalf of Metro. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.— San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

We initially note that most of the information at issue was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2009-02837 (2009), 2009-06018 (2009), and 2009-06552 (2009). In those rulings, we concluded that the submitted information that you state is responsive to items 3 and 5 of the instant request may be withheld under section 552.104 of the Government Code. You do not indicate that there has been any change in the law, facts, and circumstances on which the previous rulings are based. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). Therefore, with respect to the information that is responsive to items 3 and 5 of the instant request, Metro may continue to rely on our rulings in Open Records Letter Nos. 2009-02837, 2009-06018, and 2009-06552.³ We will consider the submitted arguments against disclosure of the remaining information at issue.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You seek to withhold information responsive to item 11 of the instant request under section 552.104. You inform us that the information responsive to item 11 is related to ongoing contract negotiations between Metro and PTG. You state that release of the information responsive to item 11 would harm Metro's bargaining position. Based on your representations, we conclude that Metro may withhold the information responsive to item 11 at this time under section 552.104. We note, however, that the city may no longer withhold that information under section 552.104 once the negotiations have been concluded and the related contract has been executed and is in effect. *See* ORD 541 at 5.

You also seek to withhold information responsive to item 7 of the instant request under section 552.104. You state that the information responsive to item 7 is not part of the current contract negotiations. You indicate, however, that the information in question is related to the "University Line corridor," which we understand is a future phase of the ongoing mass transit project to which the rest of the submitted information pertains. You contend that the release of the information responsive to item 7 "would harm [Metro's] bargaining position in that [Metro] would be unable to use traditional competitive processes to obtain the best price and terms related to the University Line corridor." Based on your representations, we

³As we are able to make this determination, we do not address your arguments or those of the third parties against disclosure of the information that is encompassed by the previous rulings.

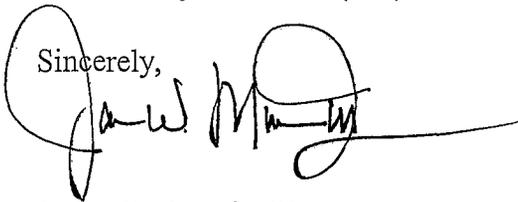
conclude that Metro also may withhold the information responsive to item 7 at this time under section 552.104.

In summary: (1) Metro may continue to rely on our rulings in Open Records Letter Nos. 2009-02837, 2009-06018, and 2009-06552 with respect to the information that is responsive to items 3 and 5 of the instant request for information; and (2) Metro may withhold the rest of the information at issue under section 552.104 of the Government Code. As we are able to make these determinations, we do not address the other submitted arguments against disclosure.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 344427

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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