



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2009

Ms. Shirley Thomas  
Senior Assistant General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2009-08193

Dear Ms. Thomas:

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# 346021.

The Dallas Area Rapid Transit ("DART") received a request for information related to proposals for security guard services. You state you have released a portion of the responsive documents to the requestor. Although you take no position with respect to the public availability of the submitted information, you believe that its release may implicate the proprietary interests of Ruiz Protective Service, Inc. ("Ruiz") and ABLE Security and Investigations, Inc. ("ABLE"). Accordingly, you have notified Ruiz and ABLE of the request and of their opportunity to submit arguments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of an exception to disclosure in certain circumstances). We have reviewed the submitted information.

Initially, we note, and you acknowledge that DART has failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301. 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 the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.*

§552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests are at stake, we will address whether the submitted information must be withheld to protect the interests of third parties. Further, we note that portions of the submitted information are subject to section 552.136 of the Government Code.<sup>1</sup> Because section 552.136 can provide a compelling reason for non-disclosure, we will address the applicability of this section to the submitted information.

We note that 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 either Ruiz or ABLE explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes either company's proprietary information protected under section 552.110, and none of it may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, 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.” Gov't Code § 552.136. DART must withhold the insurance policy numbers we have marked under section 552.136. The remaining information must be released.

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](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>1</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/eeg

Ref: ID# 346021

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Hector Ruiz  
Ruiz Protective Service, Inc.  
10939 Shady Trail Suite A  
Dallas, Texas 75220  
(w/o enclosures)

Mr. Walter D. Roberts  
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