



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2009

Ms. Cynthia S. Martinez  
Legal/Records Manager  
Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR2009-11749

Dear Ms. Martinez:

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# 352831.

The Capital Metropolitan Transportation Authority (the "authority") received a request for two specified proposals. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state that the authority believes the information may involve the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the authority has notified Alliance Work Partners ("Alliance") and Deer Oaks EAP Services, L.L.P. ("Deer Oaks") of the request and of their right to submit arguments to this office explaining why this information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that Alliance's information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-08111 (2009). In Open Records Letter No. 2009-08111, we found that the authority must withhold

the information we marked pursuant to sections 552.110 and 552.136 of the Government Code. We also found that because the authority provided no arguments, it may not withhold any of the submitted information under section 552.104 of the Government Code. The remaining information was ordered released. With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, you must continue to rely on Open Records Letter No. 2009-08111 as a previous determination, and withhold or release this information in accordance with that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we must address the authority's obligations under the Act for the information pertaining to Deer Oaks, which is not subject to the previous ruling. Section 552.301(b) requires that a governmental body inform this office which exceptions apply to a request for information within ten business days of receiving the request. *See* Gov't Code § 552.301(b). The authority failed to raise section 552.104 for this information within the ten-business-day period following the request. Accordingly, we conclude that the authority failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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). Section 552.104 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the authority has waived its claim under section 552.104 and, therefore, may not withhold any of the remaining information, pertaining to Deer Oaks, under this exception.

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 Deer Oaks on why its submitted bid proposal should not be released. Therefore, we have no basis

to conclude Deer Oaks has protected proprietary interests in its submitted information. *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. Accordingly, the authority may not withhold any portion of this company's proposal on the basis of any proprietary interest it may have in its proposal.

In summary, with regard to Alliance's information, the authority must continue to rely on Open Records Letter No. 2009-08111 as a previous determination and withhold or release Alliance's information in accordance with that decision. Deer Oak's 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, 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/dls

Ref: ID# 352831

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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