



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2010

Mr. Thomas Bailey  
VIA Metropolitan Transit  
P.O. Box 12489  
San Antonio, Texas 78212

OR2010-17611

Dear Mr. Bailey:

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# 402695.

VIA Metropolitan Transit ("VIA") received a request for proposals submitted in response to a solicitation for VIA Contract # 10-286. You state you have released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state release of this information may implicate the proprietary interests of Patterson & Associates Consulting, L.L.C. ("Patterson") and Armand Resource Group, Inc. ("Armand"). Thus, pursuant to section 552.305 of the Government Code, you notified Patterson and Armand of the request and of the companies' right to submit arguments to this office as to why their information should not be released. Gov't Code § 552.305(d); *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 to disclosure under the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Although you raise section 552.110 of the Government Code for the submitted information, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address VIA's argument under section 552.110 for 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter,

neither Patterson nor Armand have submitted comments to this office explaining how the release of their submitted information will affect their proprietary interests. Thus, we have no basis to conclude that the release of any portion of these third parties' submitted information would implicate their proprietary interests. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, VIA may not withhold any portion of the submitted information on the basis of any proprietary interests Patterson or Armand may have in the information.

We note some of the 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. As no further exceptions to disclosure have been raised, the submitted information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.

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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/tp

Ref: ID# 402695

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Gregory Jenifer  
President/CEO  
Armand Resource Group, Inc.  
121 Cedar Lane  
Teaneck, New Jersey 07666  
(w/o enclosures)

Mr. Craig Patterson  
President/CEO  
Patterson & Associates Consulting, L.L.C.  
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