



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2011

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

OR2011-04983

Dear Mr. Simmons:

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# 414202 (DART ORR # 7962).

Dallas Area Rapid Transit ("DART") received a request for a specified protest, information related to the protest, and specified solicitation provisions and procurement regulations related to a specified bus solicitation. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, and 552.131 of the Government Code.¹ Additionally, you state that release of the submitted information may implicate the proprietary interests of Daimler Buses North America ("Daimler") and North American Bus Industries, Inc. (NABI). Accordingly, you inform us, and provide documentation showing, that you notified Daimler and NABI of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from representatives

¹Although you also raise Texas Rule of Evidence for a portion of the submitted information, we note that, in this instance, the proper exception to raise when asserting the attorney-client privilege in this instance is section 552.107. *See* Open Records Decision No. 676(2002).

of Daimler and NABI. We have considered the submitted arguments and reviewed the submitted information.

We note that the requestor also seeks "any similar information that may in the future be provided to [DART] by the [p]rotestor or that may be generated by [DART] relative to the [p]rotest." Such information would be created after the date the request was received. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of documents DART maintained or had a right of access to as of the date that it received the request.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state "[a]t the time of the request the DART solicitation for the bus procurement had not been awarded by DART." You also assert release of the submitted information "would directly harm DART because [it] contains DART's techniques for reviewing the solicitation, amendment to the solicitation, and NABI and Daimler's proposals." You state the information also "contains legal reviews of the solicitation, amendments, and proposals that if released would greatly harm DART's potential interest in awarding a qualified bidder for this solicitation." Based on your representations and our review, we determine DART has demonstrated release of the submitted information would harm its interests in a competitive situation. Accordingly, DART may withhold the submitted information under section 552.104 of the Government Code.²

²As our ruling is dispositive, we do not address the other arguments to withhold this information.

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

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/tf

Ref: ID# 414202

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Christopher L. Crassweller
General Counsel
Daimler Buses North America
P.O. Box 748
Oriskany, New York 13424
(w/o enclosures)

Mr. Paul Marcela
Vice President, General Counsel
North American Bus Industries, Inc.
100 National Drive
Anniston, Alabama 36207
(w/o enclosures)