



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2013

Ms. Halfreda Anderson-Nelson  
Senior Assistant General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2013-06349

Dear Ms. Anderson-Nelson:

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# 484379 (DART ORRs 9619, 9631, 9663, 9651).

Dallas Area Rapid Transit ("DART") received four requests for the contract and bidding information concerning a solicitation for bus shelter cleaning services. Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified H&W Cleaning Systems, Inc. ("HWC") and BMR Janitorial & Pressure Washing Service, L.L.C. ("BMR") of the requests and of their right to submit arguments to this office explaining why their 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 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 received arguments submitted by BMR. Thus, we have considered its arguments and reviewed the submitted information.

We note you have not submitted a copy of the requested contract. To the extent a finalized contract existed on the date DART received the requests, we presume you have released it. If not, you must do so at this time. *See Gov't Code* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from HWC. Thus, HWC has not demonstrated it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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, DART may not withhold the submitted information on the basis of any proprietary interests HWC may have in the information.

BMR raises section 552.131(a)(2) of the Government Code, which provides:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

...

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Gov't Code § 552.131(a)(2). We note the protection afforded under section 552.131(a) is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(b). Thus, it requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* ORD 661 at 5. Upon review, we find BMR has provided only conclusory statements concerning the information at issue. Therefore, BMR has failed to demonstrate the release of the submitted information would cause substantial competitive harm. Accordingly, DART may not withhold any of BMR's information under section 552.131(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration.<sup>1</sup> Gov't Code § 552.130(a)(2). Accordingly, DART must withhold the motor vehicle record information we have marked in HWC's bid under section 552.130 of the Government Code. The remaining information must be released.

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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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 484379

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)

Ben Miller  
BMR Janitorial & Pressure Washing Service, LLC  
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Dallas, Texas 75212  
(w/o enclosures)

Le Wilbborne Maurice Williams  
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