



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2014

Ms. Kerri L. Butcher
Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2014-15008

Dear Ms. Butcher:

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# 535293.

The Capital Metropolitan Transportation Authority (the "authority") received a request for (1) the current contracts between the authority and four specified busing service providers; (2) the authority's requests for proposals for transportation services which led to the award of the contracts; and (3) the service providers' responses to the requests for proposals.¹ You state the authority released some information to the requestor. Although you take no position as to whether the remaining requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of Ride Right, L.L.C. ("Ride Right"). Accordingly, you state, and provide documentation showing, you notified Ride Right of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305

¹We note the authority sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Ride Right. We have considered the submitted comments and reviewed the submitted information.

Ride Right claims some of its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial 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 § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *See id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm). Upon review, we find Ride Right has demonstrated some of its information at issue constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the authority must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we find Ride Right failed to demonstrate the release of any of its remaining information at issue would result in substantial harm to its competitive position. Therefore, the authority may not withhold any of Ride Right’s remaining information under section 552.110(b) of the Government Code.

We note some of the remaining information 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.

In summary, the authority must withhold the information we have marked under section 552.110(b) of the Government Code. The authority must release the remaining information; however, any information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 535293

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Etta Jackson
Associate General Counsel
Right Ride LLC
16 Hawk Ridge Drive Lake
St. Louis, Missouri 63367
(w/o enclosures)