



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2014

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2014-16384

Dear Ms. Hojem:

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# 536255 (MTA No. 2014-0265).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for information pertaining to the authority's request for proposals number 1300026 (the "RFP"), specifically (1) all portions not marked as proprietary from the proposals submitted in response to the RFP, with the exception of the requestor's company's proposal; (2) evaluation documentation used in the selection process; and (3) the final contract between the authority and the winning proposers. Although you do not take any position as to whether the submitted information is excepted from disclosure under the Act, you state, and provide documentation showing, you notified Trapeze Software Group, Inc. ("Trapeze"), Genfare, VT Miltope ("Miltope"), VenTek Transit ("VenTek"), and Parkeon, Inc. ("Parkeon") of the request for information 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 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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). You inform our office Parkeon does not object to the release of its information, which you state you have released. We have received comments from Miltope. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note you have only submitted information responsive to the first category of requested information. You have not submitted information responsive to the second and third categories of requested information. We assume, to the extent any information responsive to these two categories of requested information existed on the date the authority received the request, the authority has released it. If the authority has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the information we have indicated is not responsive to the instant request for information because these portions of the proposals submitted in response to the RFP are marked as proprietary. This ruling does not address the public availability of non-responsive information, and the authority is not required to release non-responsive information in response to this request.

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) of the Government Code 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 Trapeze, Genfare, or VenTek explaining why the submitted information should not be released. Therefore, we have no basis to conclude Trapeze, Genfare, or VenTek have protected proprietary interests in the 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 the responsive information on the basis of any proprietary interest Trapeze, Genfare, or VenTek may have in the information.

Miltope claims 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 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. *Id.*; *see also* ORD 661 at 5.

Miltope argues its information consists of commercial information, the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Miltope has demonstrated the information we have marked constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the authority must withhold this information under section 552.110(b) of the Government Code. However, we find Miltope

has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its remaining responsive information would cause the company substantial competitive harm. *See* ORD 661. Therefore, we conclude the authority may not withhold any of the remaining responsive information under section 552.110(b) of the Government Code.

We note the remaining responsive information contains insurance policy numbers subject to section 552.136 of the Government Code.¹ Section 552.136 provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, the authority must withhold the insurance policy numbers at issue under section 552.136 of the Government Code.

We also note some of the remaining responsive 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 withhold the submitted insurance policy numbers under section 552.136 of the Government Code. The authority must release the remaining responsive information; however, any information that is subject to copyright may be released only 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

¹The 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).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 536255

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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