



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2014

Ms. Sara Abbott McEown  
Counsel for the Fort Worth Transportation Authority  
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901 Main Street, Suite 6000  
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OR2014-18831

Dear Ms. McEown:

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# 540053.

The Fort Worth Transportation Authority (the "authority"), which you represent, received a request for (1) vRide, Inc.'s ("vRide") response to RFP 14-T029; (2) the justification for the later-cancelled award; (3) the review process and scoring of the response, including a specified evaluation worksheet; and (4) vRide's price proposal. We understand you have released some information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.104, and 552.110 of the Government Code.<sup>1</sup> You further state release of the submitted information may implicate vRide's proprietary interests. You state you notified vRide of the request for information and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305(d); *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 comments from an attorney for vRide. We have also received and considered comments from the requestor's attorney. *See* Gov't Code § 552.304 (permitting interested third party to submit

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<sup>1</sup>We note, although you also raise section 552.022 of the Government Code, section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022. Furthermore, although you also indicate some of the submitted information may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law as a trade secret, we understand you are relying on vRide to make any such argument.

to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted the specified evaluation worksheet. To the extent any information responsive to this portion of the request existed and was maintained by the authority on the date the authority received the request, we assume the authority has released it. If the authority has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .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 must address the requestor's assertion that the authority failed to comply with the procedural requirements of the Act. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D).

The requestor informs us, and provides documentation demonstrating, a request for information was submitted to the authority on July 1, 2014. We understand the authority to claim it received clarifications from the requestor on July 15, 2014 and July 29, 2014, and the statutory deadlines should be reset from the date of the second clarification. *See id.* § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). In correspondence to our office dated August 26, 2014, the requestor argues the July 15, 2014 and July 29, 2014, e-mails to the authority do not constitute clarifications of the information requested. Upon review, we agree the July 15, 2014 and July 29, 2014, e-mails do not constitute clarifications of the information requested. These e-mails merely sought the remaining responsive information the authority did not release in response to the July 1, 2014 request. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documents were not reset and must be measured from the date the authority received the request for information on July 1, 2014. *See generally* *City of Dallas*, 304 S.W.3d at 387 (after

requesting clarification within ten-business-day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Consequently, we find the authority failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you assert the information at issue is excepted from disclosure under sections 552.103 and 552.104 of the Government Code, these exceptions are discretionary in nature and serve only to protect a governmental body's interests. As such, the authority's claims under these exceptions are not compelling reasons to overcome the presumption of openness. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 592 (1991) (stating that governmental body may waive section 552.104). Thus, in failing to comply with section 552.301, the authority has waived its arguments under these exceptions and may not withhold the submitted information on those bases. We note section 552.110 of the Government Code can provide a compelling reason for non-disclosure. Section 552.110, however, protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* ORD No. 592. Accordingly, we do not consider the authority's arguments under section 552.110; but we will address vRide's claims under section 552.110.

Section 552.110(b) of the Government Code 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* 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).

vRide argues portions of its information consist of commercial information, the release of which would cause it substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find vRide has demonstrated portions of the information at issue constitute 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 vRide has failed to demonstrate the release of any of its remaining information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the authority may not withhold any of vRide's remaining information under section 552.110(b). As no further exceptions to disclosure have been raised, the remaining information must be released.

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](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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 540053

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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