



February 6, 2015

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

OR2015-02365

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# 553115 (MTA Nos. 2015-0042 and 2015-0046).

The Metropolitan Transit Authority of Harris County (the "authority") received two requests for information pertaining to request for proposals number RP1100003, including all pre-award and post-delivery audit documents pertaining to "Buy America."¹ We understand the authority has released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of CAF USA, Inc. ("CAF"). Thus, you notified CAF of the request for information and of the company's right to submit arguments to this office as to why the submitted information 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 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).

¹We note the authority sought and received clarification of the information requested by the second requestor. *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 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).

You inform us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-18296 (2011). In Open Records Letter No. 2011-18296, we determined the authority must withhold the information we marked under section 552.110(b) of the Government Code and must release the remaining information; however, any information protected by copyright may be released only in accordance with copyright law. You do not seek to rely on the prior ruling as a previous determination, however, because “copies of previous ruling documents were destroyed in accordance with [the authority’s] records retention schedule.”

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) 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 CAF explaining why the submitted information should not be released. In addition, we note the conclusion in Open Records Letter No. 2011-18296 that CAF’s pricing information was excepted from public disclosure under section 552.110(b) was based on CAF’s assertion that it had not yet entered into a contract with the authority. We further note CAF was awarded the contract in response to the specified proposal prior to the date of the authority’s receipt of the instant requests for information.

Therefore, we find the facts and circumstances upon which Open Records Letter No. 2011-18296 was based have changed. Thus the authority may not rely on Open Records Letter No. 2011-18296 as a previous determination and may not withhold any of the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Because we have not received comments from CAF, we have no basis to conclude CAF has a protected proprietary interest 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 submitted information on the basis of any proprietary interest CAF may have in the information.

We note some of the materials at issue 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.

To summarize: Because the facts and circumstances on which Open Records Letter No. 2011-18296 was based have changed, the authority may not rely on the prior ruling as a previous determination and may not withhold any of the information at issue in accordance with that ruling. The submitted information must be released; 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 553115

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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(w/o enclosures)