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ATTORNEY GENERAL OF TEXAS

June 11, 2015

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

OR2015-11487

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# 566796 (DART ORR# 11461).

Dallas Area Rapid Transit ("DART") received a request for records generated during a specified time period regarding graffiti on DART and regional express train properties, and any records not previously released regarding incident report numbers DTC14003227, DTC14002541, and DTC14001401.¹ You state DART has provided some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of Herzog Transit Services, Inc. ("Herzog"). Accordingly, you state, and provide documentation

¹You state DART 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

showing, you notified Herzog 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 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note 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 Herzog explaining why the information submitted as Attachment B-1 should not be released. Therefore, we have no basis to conclude Herzog has protected proprietary interests in the information at issue. *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, DART may not withhold Attachment B-1 on the basis of any proprietary interests Herzog may have in the information. As no exceptions to disclosure have been claimed for this information, DART must release Attachment B-1.

Next, we note incident report number DTC14003227 was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2014-21576 (2014). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, DART may continue to rely on Open Records Letter No. 2014-21576 as a previous determination and withhold or release incident report number DTC14003227 in accordance with that ruling. *See* Open Records Decision No. 673 (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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number DTC15000590 pertains to a pending criminal case. Based on your representation

and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

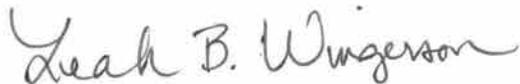
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, DART may withhold incident report number DTC15000590 under section 552.108(a)(1) of the Government Code.

In summary, DART may continue to rely on Open Records Letter No. 2014-21576 as a previous determination and withhold or release incident report number DTC14003227 in accordance with that ruling. With the exception of basic information, DART may withhold incident report number DTC15000590 under section 552.108(a)(1) of the Government Code. DART must release the remaining information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 566796

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)