



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2016

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

OR2015-21653A

Dear Ms. Nelson:

This office issued Open Records Letter No. 2015-21653 (2015) on October 15, 2015. In that ruling, based upon DART's assertion that it had provided timely notification pursuant to section 552.305 of the Government Code to the interested third parties, Herzog Technologies, Inc. ("Herzog") and Parsons Transportation Group, Inc. ("Parsons"), and because this office had not received comments from Herzog explaining why its submitted information should not be released, we determined DART may not withhold any of the information at issue on the basis of any proprietary interest Herzog may have in it. However, Herzog informed this office it did not receive notice until after the ruling was issued and has now provided comments explaining why its information should not be released. Thus, we must now address the interests of Herzog whose information is at issue. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on October 15, 2015. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 595634.

DART received a request for information pertaining to request for proposals ("RFP") number P-2006400 North Texas Commuter Rail Alliance Positive Train Control. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Herzog and Parsons 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(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 received comments from Herzog and Parsons. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-06481A (2015). In that ruling, we determined, in relevant part, DART: 1) failed to comply with section 552.301 of the Government Code and thus, waived its argument under section 552.104 for the submitted proposals; 2) may withhold Herzog's Audited Financial Statements under section 552.104(a) of the Government Code; 3) must withhold the information we marked under section 552.110(a) of the Government Code as well as Parsons' customer information under section 552.110(a) to the extent the customer information at issue is not publicly available on Parsons' website; 4) must withhold the information we marked under section 552.110(b) of the Government Code; and 5) must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude DART must rely on Open Records Letter No. 2015-06481A as a previous determination and withhold or release the identical information 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As our ruling is dispositive, we do not consider the submitted arguments against disclosure.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/dls

Ref: ID# 595634

cc: Requestor

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