



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2015

Ms. Kerri L. Butcher
Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2015-22269

Dear Ms. Butcher:

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# 584404.

The Capital Metropolitan Transportation Authority ("Capital Metro") received two requests for a specified proposal. Although you raise no exception to disclosure with respect to the public availability of the submitted information, you state release of this information may implicate the proprietary interest of Bytemark, Inc. ("Bytemark"). Accordingly, you state you notified Bytemark 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 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 Bytemark explaining why the submitted information should not be released. Therefore, we have no basis to conclude Bytemark 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, Capital Metro may not withhold the submitted information on the basis of any proprietary interest Bytemark may have in the information.

We note some of the submitted 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. Accordingly, Capital Metro must release the submitted information; however, any information 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 584404

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Micah Bergdale
CEO
Bytemark, Inc.
275 7th Avenue, Suite 1501
New York, New York 10001
(w/o enclosures)