



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 4, 2015

Mr. Sol M. Cortez  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2015-25343

Dear Mr. Cortez:

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# 589438 (Ref. No. 15-1044-460).

The City of El Paso (the "city") received a request for all proposals submitted in response to a specified request for proposals. You state you have released some information. You state some of the submitted information may be protected by copyright. Additionally, you state release of the submitted information may implicate the proprietary interests of First Transit, Inc.; MV Transportation, Inc.; McDonald Transit Associates, Inc.; and LULAC Project Amistad, d/b/a Project Amistad. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their rights to submit arguments to this office as to why their 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 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments

from any of the third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the third parties 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 city may not withhold the submitted information on the basis of any proprietary interest any of the third parties may have in the information.

You claim the portions 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. As no exceptions to disclosure have been raised, the city must release the submitted information; however, any information protected by copyright may only be released 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](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 589438

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Rick Dunning  
First Transit, Inc.  
600 Vine Street, Suite 1400  
Cincinnati, Ohio 45202  
(w/o enclosures)

Mr. Gary Coles  
MV Transportation, Inc.  
4620 Westamerica Drive  
Fairfield, California 94534  
(w/o enclosures)

Mr. Robert T. Babbitt  
McDonald Transit Associates, Inc.  
3800 Sandshell, Suite 175  
Fort Worth, Texas 76137  
(w/o enclosures)

Mr. Xavier Banales  
LULAC Project Amistad  
d/b/a Project Amistad  
1359 Lomaland, Suite 400  
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(w/o enclosures)