



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2009-02385

Dear Ms. Alexander:

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# 335567.

The Texas Department of Transportation (the "department") received a request for information pertaining to a specified "blanket master purchase order." You state that you are releasing most responsive information to the requestor. Although you raise no exceptions to disclosure on behalf of the department, you state that release of the submitted information may implicate the proprietary interests of LoneStar Logos & Signs, L.L.P. ("LoneStar").¹ Accordingly, you notified LoneStar of the request and of its opportunity to submit arguments to this office as to why its information should be excepted from public disclosure. *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 comments received from a representative of LoneStar and reviewed the submitted information.

LoneStar asserts that its presentation titled "2007 Annual Report and 2008 Marketing Plan" is subject to section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498

¹We note that in your letter dated January 22, 2009, you withdrew your assertion under section 552.103 of the Government Code.

F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999). Although LoneStar repeatedly states that release of its presentation would cause it harm, especially in its efforts in competition for future contracts, LoneStar never explains how release of any particular information from this presentation would likely result in substantial competitive injury. Accordingly, we find that LoneStar has failed to demonstrate the applicability of section 552.110(b) to the information at issue. See Open Records Decision No. 509 at 5 (1988) (stating that because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative). As you raise no exceptions to disclosure, the submitted information must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 335567

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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