



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2009

Ms. Ashley R. Allen
Staff Attorney
Administrative Law Section
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2009-06692

Dear Ms. Allen:

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# 343392.

The Texas General Land Office (the "GLO") received a request for the cost proposals of "losing bidders" pertaining to a specified RFP.¹ Although you take no position as to the disclosure of the submitted information, you state that it may contain proprietary information subject to exception under the Act. Accordingly, you state, and have provided documentation showing, that the GLO notified: Anders Construction; MLU Services Inc.; PBS&J; CRA Inc.; Frontier Surveying; and O'Brien Response Management ("O'Brien"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note PBS&J seeks to withhold information that was not submitted to this office by the GLO. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as

¹We note that the GLO received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

responsive by the GLO. *See* Gov't Code 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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 requested information relating to it should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have received comments only from PBS&J and O'Brien. None of the remaining third parties have submitted to this office any reasons explaining why their submitted information should not be released. Thus, we have no basis for concluding any portion of the submitted information pertaining to these remaining companies constitutes the proprietary information of these companies, and none of it may be withheld on that basis. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3.

PBS&J claims that some its information is subject to section 552.101 of the Government Code and that matters related to its information are required to be kept confidential. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, PBS&J has not directed our attention to any law, nor are we aware of any law, that makes the submitted information confidential. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the GLO may not withhold any of PBS&J's information under section 552.101 of the Government Code.

PBS&J raises section 552.104 of the Government Code as an exception to disclosure. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. Section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the GLO did not submit any arguments in support of withholding any information pursuant to section 552.104, the GLO may not withhold any of PBS&J's information pursuant to section 552.104 of the Government Code. *See* ORD 592 (governmental body may waive section 552.104).

PBS&J and O'Brien claim that portions of their information are excepted from disclosure under 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* ORD 661 at 5-6. Upon review, we find that PBS&J and O’Brien have demonstrated that release of portions of their information would cause those companies substantial competitive harm. Accordingly, we have marked the information that must be withheld under section 552.110(b). However, we conclude that PBS&J has made only conclusory allegations and has provided no specific factual or evidentiary showing to support its allegations that release of the remaining information at issue would cause its company substantial competitive injury. *See* Gov’t Code § 552.110; *see also, e.g.*, ORD 661 at 5-6, 509 at 5 (1988) (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 is too speculative), 319 at 3 (1982) (information relating to organization and personnel, market studies, experience, and qualifications not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Thus, no portion of the remaining information pertaining to this company may be withheld under section 552.110(b). As no further exceptions to disclosure are raised, the remaining 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 343392

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Mr. Peter S. Simons
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(w/o enclosures)

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