



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2012

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

OR2012-10973

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# 459264.

The Texas Department of Transportation (the "department") received a request for information related to a specified project. You state you will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Interlex Communications, Inc. ("Interlex"); Thompson Marketing; ThinkStreet, Inc.; GDC Marketing; and Fogarty and Klein, Inc., d/b/a FKM. Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See Gov't Code* § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received

comments from Interlex. We have considered the submitted arguments and reviewed the submitted information, portions of which consist of representative samples.¹

Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987).

You state the submitted information pertains to “a specific competitive procurement” and that “[a]lthough it appeared [the department] was complete with the process and had initially issued a statement of work to a specific contractor, [the department] has cancelled that statement of work in order to re-procure the services.” You further state the “final choice of contractor and the final statement of work arising from that process has not yet been awarded/executed.” You assert release of the submitted information would give competitors advance knowledge of internal agency information and undermine the proposal and negotiation process, ultimately resulting in less competition. Based on your representations and our review of the submitted representative sample of information, we find you have demonstrated that release of the information at issue would cause specific harm to the department’s interests in particular competitive bidding situations. Therefore, the department may withhold the submitted information under section 552.104 of the Government Code.² However, we note that the department may no longer withhold this information under this exception to disclosure once a contract has been executed and is in effect. *See* Open Records Decision No. 541 at 5 (1990).

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,

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²As our ruling is dispositive, we need not address Interlex’s arguments against disclosure.

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, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 459264

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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San Antonio, Texas 78216
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70 NE Loop 410
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