



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 6, 2012

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

OR2012-19657

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# 473261.

The Texas Department of Transportation (the "department") received two requests from the same requestor for information pertaining to request for proposal number B44201101265700. You state you have released some of the requested information to the requestor. Although you take no position on the public availability of the submitted information, you state the release of the submitted information may implicate the proprietary interests of EnviroMedia, Inc. ("EnviroMedia"); Fogarty and Klein, Inc. ("FKM"); GDC Marketing ("GDC"); Interlex Communications, Inc. ("Interlex"); Sherry Matthews Advocacy Marketing ("Sherry Matthews"); ThinkStreet, Inc. ("ThinkStreet"); and Thompson Marketing ("Thompson"). Accordingly, you inform us, and provide documentation showing, you notified these third parties of the request and of their right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from Interlex. We have considered the submitted arguments and reviewed the submitted information.

We note that 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from EnviroMedia, FKM, GDC, Sherry Matthews, ThinkStreet, or Thompson explaining why each third party's submitted information should not be released. Therefore, we have no basis to conclude that these third parties have 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 department may not withhold any portion of the submitted information based upon the proprietary interests of EnviroMedia, FKM, GDC, Sherry Matthews, ThinkStreet, or Thompson.

Next, we note Interlex only seeks to withhold information the department has not submitted to this office for our review. This ruling does not address information beyond what the department has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information. *See id.* As no further exceptions to disclosure are raised, the submitted information must be released

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](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, toll free at (888) 672-6787.

Sincerely,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 473261

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)

Ms. Valerie Davis  
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