



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 13, 2013

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Building  
125 East 11th Street  
Austin, Texas 78701-2483

OR2013-02529

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# 479311.

The Texas Department of Transportation (the "department") received a request for all proposals submitted in response to the Don't Mess with Texas Project Statement of Work Request from July, 2012, and the department's Toll Operations Division Statement of Work Request from September, 2012. Although you take no position on the public availability of the submitted information, you state the submitted information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, you notified EnviroMedia, Inc. ("EnviroMedia") and Sherry Matthews Advocacy Marketing ("Advocacy Marketing") of the request and of their right to submit comments to this office as to why the submitted 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 Act in certain circumstances). We have reviewed the submitted information.

Initially, we note the proposals submitted in response to the Don't Mess with Texas Project Statement of Work Request from July, 2012, were the subject of a previous request for information, as a result of which this office issued Open Records Letter

No. 2012-19657 (2012). In Open Records Letter No. 2012-19657 we determined that all the proposals at issue in that ruling must be released. With respect to the information pertaining to Advocacy Marketing; Fogarty and Klein, Inc.; Interlex Communications, Inc.; GDC Marketing; Thompson Marketing; and ThinkStreet, Inc., that was submitted in response to the Don't Mess with Texas Project Statement of Work Request from July, 2012, and was previously submitted to and ruled on by this office, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department must rely on Open Records Letter No. 2012-19657 as a previous determination and release the proposals submitted in response to the Don't Mess with Texas Project Statement of Work Request from July, 2012, by Advocacy Marketing; Fogarty and Klein, Inc.; Interlex Communications, Inc.; GDC Marketing; Thompson Marketing; and ThinkStreet, Inc., in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We note although EnviroMedia was notified of the request for its information pursuant to section 552.305 of the Government Code in Open Records Letter No. 2012-19657, you inform us the requestor in that ruling was a representative of EnviroMedia, and, therefore, EnviroMedia did not submit comments in response to the request at issue in that ruling. Accordingly, we determined in our previous ruling the department must release, among other things, EnviroMedia's proposal. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold the previously released information, unless its release is expressly prohibited by law or the information is confidential by law. Generally, a compelling reason to withhold information exists where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You inform us the requestor in this instance is not a representative of EnviroMedia, and, therefore, you have notified EnviroMedia of the request so the company may submit comments to this office as to why the submitted information should not be released to the requestor. Therefore, because circumstances have changed with respect to EnviroMedia's information submitted in response to the Don't Mess with Texas Project Statement of Work Request from July, 2012, the department may not rely upon the prior ruling as a previous determination for EnviroMedia's information, and we will address whether any of the company's information must be withheld under the Act.

Next, we note you have only submitted one proposal pertaining to the department's Toll Operations Division Statement of Work Request from September, 2012. To the extent any remaining responsive proposals for the department's Toll Operations Division Statement of Work Request from September, 2012, existed on the date the department received the request, we assume you have released them. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, 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 EnviroMedia or Advocacy Marketing on why their submitted information should not be released. Therefore, we have no basis to conclude EnviroMedia or Advocacy Marketing have protected proprietary interests 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 on the basis of any proprietary interest EnviroMedia or Advocacy Marketing may have in it.

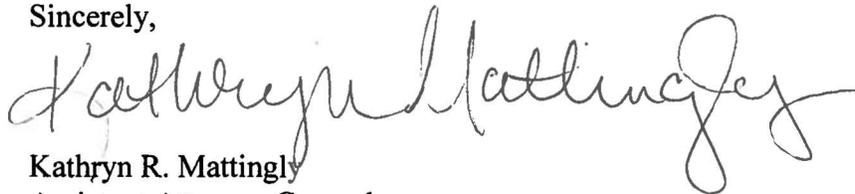
We note some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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.

In summary, the department must release the proposals submitted in response to the Don't Mess with Texas Project Statement of Work Request from July, 2012, by Advocacy Marketing; Fogarty and Klein, Inc.; Interlex Communications, Inc.; GDC Marketing; Thompson Marketing; and ThinkStreet, Inc., in accordance with Open Records Letter No. 2012-19657. The remaining information must be released; however, any information subject to 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.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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 479311

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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