



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2013

Mr. Michael VanderBurg
General Counsel
Legislative Budget Board
P.O. Box 12666
Austin, Texas 78711-2666

OR2013-02641

Dear Mr. VanderBurg:

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# 478869.

The Legislative Budget Board (the "board") received a request for "all Texas Project Delivery Framework documents, also known as Quality Assurance Team (QAT) documents," submitted to the board during a specified time period. You state the board has released some responsive information to the requestor. Although the board takes no position on whether the remaining requested information is excepted from disclosure, you state release of the information at issue may implicate the interests of fourteen third parties.¹ Accordingly, you inform us you have notified the third parties of the request pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). The comptroller's office, DADS, the OAG, and TWC have no objection to release of their

¹The third parties that received notice pursuant to section 552.305 are the following: the Office of the Attorney General (the "OAG"), the Texas Alcoholic Beverage Commission, the Texas Comptroller of Public Accounts (the "comptroller's office"), the Texas Department of Aging and Disability Services ("DADS"), the Texas Department of Assistive and Rehabilitative Services, the Texas Department of Family and Protective Services ("DFPS"), the Texas Department of Motor Vehicles, the Texas Department of State Health Services, the Texas Department of Transportation ("TXDOT"), the Texas Education Agency, the Texas Health and Human Services Commission, the Teacher Retirement System of Texas ("TRS"), the Texas Water Development Board, and the Texas Workforce Commission ("TWC").

information. We have received comments from DFPS, TRS, and TXDOT.² We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, we must address the obligations of the board under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Gov't Code § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e).

You state the board initially received the request for information on September 27, 2012. You assert the requestor's September 27th request was withdrawn by operation of law for failure to timely respond to a cost estimate for providing requested records. Upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615(a) of the Government Code. *See id.* § 552.2615(a). Accordingly, we conclude the requestor's September 27th request was not withdrawn by operation of law. *See id.* § 552.2615(b). We further note the provision of a cost estimate to the requestor did not toll the board's deadlines under section 552.301. *See id.* § 552.2615(g) ("The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G [of the Act].").

Because you do not inform this office the board was closed during any business days between September 27, 2012, and October 18, 2012, we find the board's ten- and fifteen-business-day deadlines were October 11, 2012, and October 18, 2012, respectively. However, the board did not submit its request for a decision until December 7, 2012, and the information required by section 552.301(e) until January 30, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United

²TRS has no objection to release of its TEAM Project Planning Review Gate Approval.

³We 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.

States mail, common or contract carrier, or interagency mail). Accordingly, we find the board failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because the claims of a third party can provide a compelling reason for non-disclosure, we will consider whether the board must withhold any of the submitted information pursuant to the third-party arguments.

As of the date of this letter, only DFPS, TRS, and TXDOT have submitted comments to this office explaining why their submitted information should not be released. Therefore, we have no basis to conclude that the remaining third parties have a protected 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 (1990). Accordingly, the board may not withhold any portion of the information pertaining to the third parties that have not submitted comments to this office on the basis of any interest those parties may have in the information.

DFPS seeks to withhold its "cost detail" information under section 552.110 of the Government Code. We note section 552.110 is designed to protect the interests of private third parties, not the interests of a governmental body. Thus, we do not address the arguments of DFPS under section 552.110 of the Government Code.

TRS and TXDOT raise section 552.104 of the Government Code. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. 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) (discussing statutory predecessor). 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). Generally, section 552.104 does not except bids from disclosure

after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

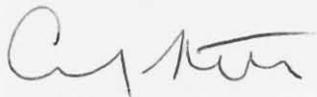
TXDOT states the submitted information relates to the STARS II and TxTAG Back Office projects that are part of an ongoing procurement process in which no contract has been awarded. TRS states the information it seeks to withhold in its TEAM Project and Acquisition Plans is also part of an ongoing procurement process and no contract has been awarded. Both TXDOT and TRS assert release of the information at issue would give bidders a competitive advantage and would harm the governmental body's ability to obtain the lowest price and most favorable terms possible. Based on these representations and our review, we find TXDOT and TRS have demonstrated release of the information at issue could harm their interests in a particular competitive situation. Accordingly, we conclude the board may withhold the information at issue pertaining to TXDOT and TRS under section 552.104 of the Government Code. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation). As section 552.104 is dispositive, we do not address the remaining argument submitted by TRS for its information.

In summary, the board may withhold the information at issue pertaining to TXDOT and TRS under section 552.104 of the Government Code. The remaining 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 478869

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Jordan Hale
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(w/o enclosures)

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528
(w/o enclosures)

Ms. Judy A. Sandberg
Ms. Heather L. Hall
Texas Department of Aging and Disability Services
701 West 51st Street
Austin, Texas 78751
(w/o enclosures)

Mr. Jeff Peden
Texas Department of Assistive and Rehabilitative Services
4800 North Lamar, Suite 320
Austin, Texas 78756
(w/o enclosures)

Mr. John R. Adamo
Director, Administrative Legal Services
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 787814-9030
(w/o enclosures)

Ms. Linda M. Flores
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731
(w/o enclosures)

Mr. Jim Skelton
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756-3199
(w/o enclosures)

Ms. Sharon Alexander
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483
(w/o enclosures)

Mr. Bowden Hight
Texas Health and Human Services Commission
4900 North Lamar, Seventh Floor
Austin, Texas 78751
(w/o enclosures)

Mr. Don Ballard
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698
(w/o enclosures)

Mr. Jay Webster
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731
(w/o enclosures)

Ms. Glenda Williams
Texas Education Agency
1701 North Congress Avenue, Room 2.185
Austin, Texas 78701
(w/o enclosures)

Ms. Lisa Petoskey
Texas Water Development Board
1700 North Congress Avenue, Room 513B
Austin, Texas 78701
(w/o enclosures)

Ms. Leslie Howes
Ms. Jodi L. Ashlock
Ms. Dee Meador
Texas Workforce Commission
101 East 15th Street, Room 618
Austin, Texas 78778-0001
(w/o enclosures)