



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 10, 2015

Mr. Kyle O. Jones
Assistant District Attorney
County of Brazoria
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2015-06895

Dear Mr. Jones:

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# 559530.

The Brazoria County Purchasing Department (the "county") received a request for all proposals submitted in response to request for proposals number 14-60, Brazoria County State Highway 288 Electronic Toll Collection System Integrator, and the scoring sheets and evaluation information. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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. Section 552.101 encompasses information made confidential by section 366.403 of the Transportation Code. Section 366.403 provides:

¹We assume 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.

(a) To encourage private entities to submit proposals under this subchapter, the following information is confidential, is not subject to disclosure, inspection, or copying under [the Act], and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Sections 366.402(b)(1) and (2), unless the private entity consents to the disclosure of the information;

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement unless the private entity consents to the disclosure of the information or material; and

(3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement or during the authority's preparation of a proposal to the department relating to a comprehensive development agreement.

(b) After an authority completes its final ranking of proposals under Section 366.402(h), the final rankings of each proposal under each of the published criteria are not confidential.

Transp. Code § 366.403. Section 366.401 of the Transportation Code allows for regional tollway authorities to enter into comprehensive development agreements with private entities for turnpike projects. *Id.* § 366.401; *see also id.* § 366.003(1), (11) (defining “authority” and “turnpike project” for purposes of chapter 366 of the Transportation Code). Authorities may solicit proposals in accordance with section 366.402 of the Transportation Code. *Id.* § 366.402(a) (authority may accept unsolicited proposals for a proposed turnpike project or solicit proposals in accordance with section 366.402). You explain the Brazoria County Toll Road Authority (the “authority”) recently solicited proposals for a comprehensive development agreement pursuant to section 366.402 of the Transportation Code. You state the information at issue consists of proposals submitted by third party vendors in response to the specified request for proposals and the authority’s evaluation and scoring documents for the proposals. You further state the county commissioner’s court has approved the award for the specified project, but the authority has yet to approve this award. You explain, without approval of the authority, no agreement has been formally signed and no contract is in effect. You give no indication any of the private entities at issue have consented to disclosure of the information. Thus, based on your representations and our review, we find the county has demonstrated the information at issue is confidential under section 366.403(a) of the Transportation Code. Accordingly, the county must withhold the requested

information under section 552.101 of the Government Code in conjunction with section 366.403(a) of the Transportation Code until such time as a contract has been executed. *Id.* § 366.403(a) (information subject to section 366.403(a) is confidential until a final contract is entered into).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 559530

Enc. Submitted documents

c: Requestor
(w/o enclosures)