



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2015

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

OR2015-08186

Dear Ms. Parker:

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# 561853.

The Texas Department of Transportation (the "department") received two requests from the same requestor for bid proposals submitted in response to department solicitation numbers Q442013040232000 and Q44201303552700. Although you do not take any position as to whether the submitted information is excepted from disclosure under the Act, you state, and provide documentation showing, you notified Alliance Texas Engineering Company d/b/a Alliance Transportation Group ("Alliance") and ETC Institute ("ETC") of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

¹We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301 (b), (e). Nonetheless, because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider any arguments submitted by Alliance and ETC as to the applicability of the Act to the submitted information. *See id.* §§ 552.007, .302, .352.

explain applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, you state a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-18633 (2012). In that ruling, we determined the department must withhold certain information under section 552.110(b) of the Government Code and release the remaining information. 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. 2012-18633 as a previous determination and withhold or release the identical information 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).

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) of the Government Code 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, we have not received comments from Alliance or ETC explaining why the remaining information should not be released. Therefore, we have no basis to conclude these third parties have protected proprietary interests in the remaining 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 the remaining information on the basis of any proprietary interest Alliance or ETC may have in the information.

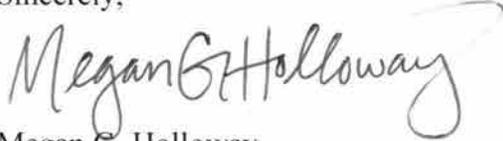
In summary, the department must rely on Open Records Letter No. 2012-18633 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must release the remaining information.

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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 561853

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Chris Tatham
ETC Institute
725 West Frontier Circle
Olathe, Kansas 66061
(w/o enclosures)

Mr. Trey Gamble
Alliance Texas Engineering Company dba
Alliance Transportation Group
11500 Metric Boulevard, Building M-1, Suite 150
Austin, Texas 78758
(w/o enclosures)