



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 6, 2015

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

OR2015-16295

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# 572747.

The Texas Department of Transportation (the "department") received a request for information for a specified time period pertaining to a specified project. You state the department released some of the requested information to the requestor. Although the department takes no position with respect to whether the remaining requested information is excepted from disclosure, you state its release may implicate the interests of Zachry-Odebrecht Parkway Builders ("ZOPB"). Accordingly, you state, and provide documentation demonstrating, the department notified ZOPB of the request for information and of its right to submit arguments stating why its information should not be released. *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 explain applicability of exception in certain circumstances). We have reviewed the submitted information and the arguments submitted by a representative of ZOPB. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note some of the submitted information, which we have indicated, is not responsive to the present request for information because it falls outside the time period specified in the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release such information in response to this request.

Next, we address the requestor's claim the department failed to comply with the section 552.301(b) of the Government Code in requesting a ruling from this office. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The department received the request for information on March 4, 2015. You state the department provided the requestor with a cost estimate pursuant to section 552.2615 of the Government Code and required a deposit. *See id.* §§ 552.2615(a), .263(a). You state the department received payment of the deposit on May 6, 2015. Thus, May 6, 2015, is the date on which the department is deemed to have received the request. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond). Accordingly, the ten-business-day deadline for requesting a ruling from this office was May 20, 2015. The department requested a ruling from this office on May 19, 2015. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the department complied with the procedural requirements of section 552.301(b) of the Government Code in requesting this decision.

ZOPB argues its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

ZOPB contends the submitted information is commercial or financial information, release of which would cause substantial competitive harm to the company. Upon review of ZOPB's arguments under section 552.110(b), we conclude ZOPB has established the release of the information pertaining to the details of its design for the project at issue would cause the company substantial competitive injury. Accordingly, the department must withhold the responsive information we have indicated under section 552.110(b). However, we

find ZOPB has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its remaining responsive information would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982). We therefore conclude the department may not withhold the remaining responsive information under section 552.110(b) of the Government Code. As no further exceptions to disclosure have been raised, the department must release the remaining responsive 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/dls

Ref: ID# 572747

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Rodrigo J. Figueroa
Counsel for Zachry-Odebrecht Parkway Builders
Dykema Cox Smith
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205
(w/o enclosures)