



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 30, 2015

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

OR2015-20468

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# 581240.

The Texas Department of Transportation (the "department") received two requests from the same requestor for information pertaining to specified contracts for specified time periods.<sup>1</sup> You state the department released some information. Although the department takes no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Bain Medina Bain, Inc. ("Bain"); Kennedy Consulting, Inc. ("KCI"); and Klotz Associates, Inc. Accordingly, you state you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from KCI. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter

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<sup>1</sup>We note the department sought and received clarification of the information requested. *See Gov't Code* § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

No. 2015-19036 (2015). In Open Records Letter No. 2015-19036, we concluded (1) the department may withhold certain information under section 552.104(a) of the Government Code; (2) the department must withhold certain information under section 552.110(b) of the Government Code; and (3) the department must release the remaining responsive information; however, any information protected by copyright may only be released in accordance with copyright law. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2015-19036 as a previous determination and withhold or release the identical information in accordance with that ruling.<sup>2</sup> 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 information is or is not excepted from disclosure). Next, we consider the submitted information that is not subject to this prior ruling.

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 Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Bain explaining why the submitted information should not be released. Therefore, we have no basis to conclude Bain has a protected proprietary 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. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest Bain may have in the information.

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, the department may continue to rely on Open Records Letter No. 2015-19036 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.

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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](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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 581240

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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