



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 19, 2016

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

OR2016-03981

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# 599811.

The Texas Department of Transportation ("TxDOT") received a request for all information pertaining to a specified solicitation.¹ TxDOT states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. TxDOT also states, and provides documentation showing, it notified TransCore and Traf-Tex, Inc., of TxDOT's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 considered the claimed exceptions and reviewed the submitted information, a portion of which is a representative sample.²

¹TxDOT sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

²We 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 those records contain substantially different types of information than that submitted to this office.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). TxDOT represents Exhibit B pertains to a competitive bidding situation. TxDOT explains Exhibit B consists of scoring and evaluation criteria documents that relate to contracts that have been awarded and executed. However, TxDOT states it “solicits proposals for professional services, including the same types of services at issue here, on a recurring basis.” TxDOT asserts the disclosure of Exhibit B will undercut its negotiating position with respect to future procurements for such contracts, and would allow third-party competitors to tailor their letters of interest to specific evaluation criteria, undermining the quality of letters of interest and undermining competition among competitors. Upon review, we find TxDOT has established the release of Exhibit B would give advantage to a competitor or bidder. Therefore, TxDOT may withhold Exhibit B under section 552.104(a) of the Government Code.³

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 requested information relating to it should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, none of the interested third parties has submitted to this office any reasons explaining why the remaining information should not be released. Thus, we have no basis for concluding the remaining information constitutes proprietary information of these third parties, and TxDOT may not withhold any portion of it on that basis. *See* 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, 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.

The remaining information contains insurance policy numbers. Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”⁴ Gov’t Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, TxDOT must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

³As our ruling is dispositive, we do not address the other argument of TxDOT to withhold this information.

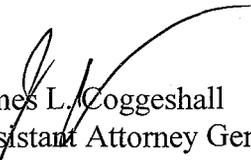
⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

To conclude, TxDOT may withhold Exhibit B under section 552.104(a) of the Government Code. TxDOT must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. TxDOT must release the remaining information.⁵

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 599811

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Mr. Mario J. Reyna
President
Traf-Tex, Inc.
8420 Hansen Road
Houston, Texas 77075
(w/o enclosures)

Mr. Clint Holley
Associate Vice President
TransCore
4903 West Sam Houston Parkway North,
Suite A-300
Houston, Texas 77041
(w/o enclosures)