



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2016

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

OR2016-07611

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# 604301.

The Texas Department of Transportation (the "department") received a request for certain information contained in all statements of qualifications or letters of interest submitted to the department in response to specified solicitations. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of third parties. Accordingly, you state you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released.¹ *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 reviewed the submitted information.

¹Arredondo Zepeda & Brunz, L.L.C.; BridgeFarmer & Associates, Inc.; Burns & McDonnell Engineering Company, Inc.; CH2M Hill, Inc.; Cobb Fendley & Associates, Inc.; Dannenbaum Engineering Corporation; H W Lochner, Inc.; HDR Engineering, Inc.; HNTB Corporation; Huitt-Zollars, Inc.; I.S. Engineers, L.L.C.; IS Engineering, L.L.C.; Jacobs Engineering Group, Inc.; Kellogg Brown & Root Services, Inc.; Lockwood Andrews & Newman, Inc.; Michael Baker Jr., Inc.; Parsons Brinckerhoff, Inc.; Rodriguez Transportation Group, Inc.; and S&B Infrastructure, Ltd.

Initially, we note some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2016-05954 (2016), 2015-19946 (2015), 2015-13055 (2015), 2015-12115 (2015), and 2014-18316 (2014). There is no indication the law, facts, and circumstances on which the prior rulings were 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 must continue to rely on Open Records Letter Nos. 2016-05954, 2015-19946, 2015-13055, 2015-12115, and 2014-18316 as previous determinations and withhold or release the identical information in accordance with those rulings. *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). However, we will address the public availability of the submitted information, which was not at issue in the previous rulings.

We note 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 any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties have protected proprietary interests 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 any of the third parties may have in the information.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

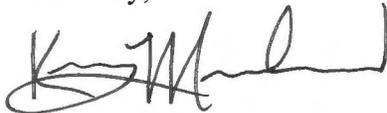
In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to

rely on Open Records Letter Nos. 2016-05954, 2015-19946, 2015-13055, 2015-12115, and 2014-18316 as previous determinations and withhold or release the identical information in accordance with those rulings. The department must release the submitted information; however, any information protected by copyright may only be released in accordance with copyright law.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 604301

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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