



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2016

Mr. James Powell
Assistant General Counsel
North Central Texas Council of Governments
P.O. Box 5888
Arlington, Texas 76005-5888

OR2016-11523

Dear Mr. Powell:

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# 612576.

The North Central Texas Council of Governments (the "council") received eleven requests from the same requestor for specified traffic count, traffic projection, and toll revenue information pertaining to specified tollways. You state you will release some information to the requestor. Although the council takes no position as to the disclosure of the submitted information, you state the release of this information may implicate the proprietary interests of the Texas Department of Transportation (the "department"). Accordingly, you state, and provide documentation showing, you have notified the department of the request and its right to submit arguments to this office. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments on behalf of Cintra.¹ *See id.* § 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

¹As of the date of this letter, we have not received any comments from the department explaining why any portion of the submitted information should not be released to the requestor.

circumstances). We have considered the submitted arguments and reviewed the submitted information.

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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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.” *Id.* at 841. Cintra states it has competitors. In addition, Cintra states release of the information at issue would give advantage to the competitors and allow those competitors to reverse engineer their bids. After review of the information at issue and consideration of the arguments, we find Cintra has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the council may withhold the information we have marked under section 552.104(a) of the Government Code.²

We note some of the remaining information appears to 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, the council may withhold the information we have marked under section 552.104(a) of the Government Code. The council must release the remaining information; however, any information subject to 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

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 612576

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

REF ID # 612576

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