



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2016

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

OR2016-16042

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# 618897.

The Texas Department of Transportation (the "department") received a request for information pertaining to specified solicitations. The department states it is withholding or releasing some of the requested information in accordance with Open Records Letter Nos. 2015-26573 (2015) and 2016-03677 (2016). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The department does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the department states, and provides documentation showing, it notified interested third parties of the department'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.¹ *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor

¹The department notified the following third parties: AECOM Technical Services, Inc.; APM & Associates; Arredondo, Zepeda & Brunz; Barnhart Constructors, Inc.; Binkley & Barfield, Inc.; Bridgefarmer & Associates, Inc.; Brown & Gay Engineers, Inc.; Burns & McDonnell Engineering Company, Inc.; Chad Wright Engineering, Inc.; Chica and Associates; Civil Associates, Inc.; Civil Corp, LLC; Cobb Fendley & Associates, Inc.; Costello, Inc.; Dannenbaum Engineering Corporation; Entech Civil Engineers; Freese and Nichols, Inc.; Global Civil Solutions; Gonzalez De La Garza & Associates, LLC; HR Green, Inc.; Huitz-Zollars; HWLochner, Inc.; IEA; IS Engineers; K Friese & Associates, Inc.; Klotz Associates, Inc.; Kysu Group, PLLC; Lamb-Star Engineering, LP; Lina T. Ramey and Associates, Inc.; LJA Engineering, Inc.; Lockwood Andrews & Newman, Inc.; Mandy Vassigh Engineering, Inc.; Michael Baker International; Othon, Inc. Consulting Engineers; Parsons Brinckerhoff, Inc.; Poznecki-Camarillo, Inc.; Rodriguez Transportation Group; S&B Infrastructure Ltd. ("S&B"); Stantec Consulting Services; Unintech Consulting Engineers, Inc.; VRX Inc; Walter P Moore and Association, Inc. ("Moore"); and White Hawk Engineering & Design LLC.

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 S&B and Moore objecting to the release of some of the information at issue under sections 552.104 and 552.110 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.²

Initially, we note one of the third parties seeks to withhold information that the department did not submit for our review. This ruling does not address information beyond what the department has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information. *See id.*

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, only S&B and Moore have submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of any of the remaining third parties, and the department 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.

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, 841 (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.* Moore and S&B state they have competitors and argue release of the information they have indicated would cause them substantial competitive harm. Upon review, we find these third parties have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold this information under section 552.104(a) of the Government Code.³ The

²The department acknowledges, and we agree, it did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider whether the submitted information must be withheld under the Act on that ground.

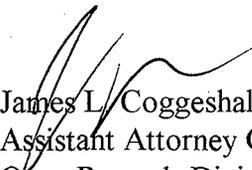
³As our ruling is dispositive, we do not address the remaining arguments to withhold this information.

department must release the remaining information that is responsive to the request for 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 618897

Enc. Submitted documents

c: Requestor
(w/o enclosures)

43 third parties
(w/o enclosures)