



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2016

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

OR2016-18188

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# 622393.

The Texas Department of Transportation (the "department") received a request for a specified contract, the list of subcontractors associated with that contract, and the current confidential questionnaire for the specified contractor. You state the department has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the you state release of this information may implicate the proprietary interests of Jasco. You state, and provide documentation showing, the department notified Jasco of the request for information and of its right 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 considered the exception you claim and reviewed the submitted representative sample of information.¹

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

¹ We 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 that those records contain substantially different types of information than that submitted to this office.

information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state the department relies on construction and maintenance contracts to build roads. In this instance, you state, a contractor’s ability to bid on any contract is based upon the department’s qualification of the contractor. You state, “[t]o maximize efficiency and save time and money, [the department] has instituted a ‘prequalification’ procedure that requires contractors to submit certain financial information in advance of any bid.” See 43 T.A.C. § 9.12. You state the release of Exhibit B would reduce competition on competitive bids and cause the department to pay more for construction and maintenance work. Based on your representations, we find you have demonstrated the release of Exhibit B would give an advantage to a competitor or bidder and would cause specific harm to the department’s interests in particular competitive bidding situations. Therefore, the department may withhold Exhibit B under section 552.104(a) of the Government Code.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/akg

Ref: ID# 622393

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)