



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2016

Ms. Claire Swann
Assistant Director General Counsel
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

OR2016-01715

Dear Ms. Swann:

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# 595471 (NTTA File No. 2015-01838).

The North Texas Tollway Authority (the "authority") received a request for a specified contract, as well as a list of all vendors that responded to a specified solicitation. You state you will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of HNTB. Accordingly, you state you notified HNTB of the request for information and of its right to submit arguments to this office as to why the submitted information 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 received comments from counsel for HNTB. We have reviewed the submitted information and the submitted arguments.

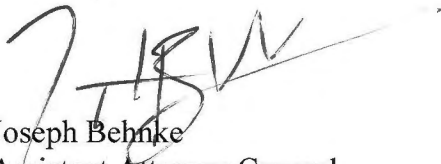
Initially, you state the requestor specifically excluded financial statements related to HNTB and its subcontractors. Accordingly, this information is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the authority is not required to release that information in response to the request.

Section 552.104(a) of the Government Code exempts 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. HNTB indicates it has competitors. In addition, HNTB states the release of some of the information at issue would offer a significant competitive advantage to its competitors. After review of the information at issue and consideration of the arguments, we find HNTB has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the information we have indicated under section 552.104(a).¹ As no further exceptions have been raised for the remaining information, the authority must release it.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 595471

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

Mr. P. Randall Crump
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(w/o enclosures)