



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2016

Ms. Angela Hough
Assistant General Counsel
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026

OR2016-22371

Dear Ms. Hough:

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# 629858 (NTTA File No. 2016-02060).

The North Texas Tollway Authority (the "authority") received a request for information pertaining to (1) a specified agreement; (2) a specified request for proposals; (3) all responses to a specified request for proposals; (4) all documents sent to or received from a specified company; and (5) insurance policies received by, or on behalf of, a specified company. You inform us the authority will release some information to the requestor. You state the authority will withhold insurance policy numbers pursuant to section 552.136(c) of the Government Code.¹ 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

¹You state the authority will redact insurance policy numbers subject to section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information without requesting an attorney general decision. However, the Texas Legislature amended section 552.136 to allow a governmental body to redact information described in section 552.136(b) without a ruling from this office. *See Gov't Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor of his right to appeal the redactions in accordance with section 552.136(e). *See id.* § 552.136(e). Open Records Decision No. 684 does not permit the requestor to appeal such redactions. Thus, the statutory amendment to section 552.136 of the Government Code supercedes Open Records Decision No. 684, and a governmental body may redact information subject to section 552.136(b) in accordance with section 552.136(c), not Open Records Decision No. 684.

proprietary interests of multiple third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released.² 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 AAG, APSI, F&N, PaveTex, Paragon, TEAM, and Terracon. We have reviewed the submitted information and the submitted arguments.

Initially, 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) 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 only received comments from AAG, APSI, F&N, PaveTex, Paragon, TEAM, and Terracon explaining why their information should not be released. Therefore, we have no basis to conclude the remaining third parties have a protected proprietary interest 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 authority may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the 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. AAG, APSI, F&N, PaveTex, Paragon, TEAM, and Terracon indicate they have competitors. In addition, AAG, APSI, F&N, PaveTex, Paragon, TEAM, and Terracon represent release of their information at issue would give their competitors an

²The authority notified Alliance Geotechnical Group ("AAG"); Alpha Testing, Inc.; AMEC Environment & Infrastructure, Inc.; APEX Geoscience, Inc.; APSI Construction Management ("APSI"); Bowman Engineering; Burns & McDonnell; CMTS, LLC; Fargo Consultants, Inc.; Freese and Nichols ("F&N"); Fugro Consultants, Inc.; HDR Engineering, Inc.; H.J. Russell & Company; Hunt Consulting Services; HVJ Associates; Kleinfelder Central, Inc.; Lamb-Star Engineering, LP; Lockwood Andrews & Newnam, Inc.; Mas-Tek Engineering; Paragon Project Resources, Inc. ("Paragon"); PaveTex Engineering and Testing, Inc. ("PaveTex"); Professional Service Industries, Inc.; Project Management Associates; Raba Kistner Infrastructure, Inc.; Rone Engineering Services, Ltd.; SAM-Construction Services, Inc.; Shaw Environmental & Infrastructure, Inc.; TEAM Consultants, Inc. ("TEAM"); TEI Program Construction Management, Inc.; Terracon Consultants, Inc. ("Terracon"); and URS Corp.

advantage. After review of the information at issue and consideration of the arguments, we find AAG, APSI, F&N, PaveTex, Paragon, TEAM, and Terracon have established release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold AAG's, APSI's, F&N's, PaveTex's, Paragon's, TEAM's, and Terracon's information under section 552.104(a) of the Government Code.³

You indicate, pursuant to Open Records Decision No. 684, the authority will redact certain e-mail addresses subject to section 552.137 of the Government Code in the information being released.⁴ We note you marked some information you have not demonstrated is subject to section 552.137. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). However, we note the address and phone number you marked are not subject to section 552.137 of the Government Code and may not be withheld on that basis. Therefore, with the exception of the information we marked for release, the authority must withhold the personal e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the authority may withhold AAG's, APSI's, F&N's, PaveTex's, Paragon's, TEAM's, and Terracon's information under section 552.104(a) of the Government Code. With the exception of the information we marked for release, the authority must withhold the personal e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The authority must release the remaining 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

³As our ruling is dispositive, we need not address AAG's, APSI's, F&N's, PaveTex's, Paragon's, TEAM's, and Terracon's remaining arguments against disclosure of their information.

⁴Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including e-mail addresses of members of the public subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 "Gerald A. Arismendez". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 629858

Enc. Submitted documents

c: Requestor
(w/o enclosures)

31 Third Parties
(w/o enclosures)