



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 30, 2016

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

OR2016-26443

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# 635772.

The Texas Department of Transportation (the "department") received a request for the bid proposals submitted by certain third parties in response to twelve specified solicitation numbers.<sup>1</sup> Although you take no position as to the public availability of the submitted information, you state its release may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their rights to submit arguments to this office as to why

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<sup>1</sup>You state the department sought and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

the submitted information should not be released.<sup>2</sup> *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 on behalf of Cobb Fendley, Pape-Dawson, RTG, WPM, and VRX. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note some of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2016-20130 (2016), 2016-21433 (2016), 2016-25179 (2016), 2016-25808 (2016), and 2016-26021 (2016). As we have no indication the law, facts, and circumstances on which the prior rulings were based have changed, the department may continue to rely on those rulings as previous determinations and withhold or release the submitted information in accordance with Open Records Letter Nos. 2016-20130, 2016-21433, 2016-25179, 2016-25808, and 2016-26021.<sup>4</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from RTG and Pape-Dawson explaining why each company's submitted information should not be released. Therefore, we have no

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<sup>2</sup>The third parties notified pursuant to section 552.305 are: Aecom Technical Services, Inc.; AIA Engineers, Ltd.; Arredondo, Zepeda & Brunz, L.L.C.; Atkins North America, Inc.; Baseline Corporation; Bridgefarmer & Associates, Inc.; Brown & Gay Engineers, Inc.; Civil Design Services, Inc. d/b/a CDS Muery; Cobb, Fendley & Associates, Inc. ("Cobb Fendley"); Dannenbaum Engineering Corporation; Entech Civil Engineers, Inc.; HDR Engineering, Inc.; HNTB Corporation; IEA, Inc.; Kimley-Horn and Associates, Inc.; Klotz Associates, Inc.; LJA Engineering, Inc.; Martin Y. Hsu, PE, CVS & Associates, Inc.; McGray & McGray Land Surveyors, Inc.; Othon, Inc.; Pape-Dawson Consulting Engineers, Inc. ("Pape-Dawson"); Parsons Brinckerhoff, Inc.; Parsons Transportation Group, Inc.; Raba Kistner, Inc.; Rodriguez Transportation Group, Inc. ("RTG"); RODS Surveying, Inc.; Survtex, L.L.C.; Walter P. Moore and Associates ("WPM"); Vickrey & Associates, Inc.; and VRX, Inc. ("VRX").

<sup>3</sup>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 those records contain substantially different types of information than that submitted to this office.

<sup>4</sup>As our ruling is dispositive, we need not address the arguments of Cobb Fendley, WPM, and VRX against disclosure of this information.

basis to conclude any of the remaining third parties have protected proprietary interests in the remaining submitted information. *See id.* § 552.110(a)-(b); 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 department may not withhold any portion of the remaining submitted information on the basis of any proprietary interests the remaining third parties may have in it.

Next, we note Pape-Dawson objects to disclosure of information the department has not submitted to this office for review. This ruling does not address information that was not submitted by the department and is limited to the information submitted as responsive by the department. *See Gov't Code* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. RTG and Pape-Dawson state they have competitors. In addition, they state release of the information at issue would reveal commercial and financial information which would provide competitors an advantage. After review of the information at issue and consideration of the arguments, we find RTG and Pape-Dawson have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have indicated under section 552.104(a) of the Government Code.

In summary, the department may continue to rely on Open Records Letter Nos. 2016-20130, 2016-21433, 2016-25179, 2016-25808, and 2016-26021 as previous determinations and withhold or release the identical information in accordance with those rulings. The department may withhold the information we have indicated under section 552.104(a) of the Government Code. The department 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 635772

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Parties  
(w/o enclosures)