



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2017

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

OR2017-00798

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# 641207.

The Texas Department of Transportation (the "department") received four requests from the same requestor for five categories of information from any statements of qualification, letters of interest, or other similar submissions made to the department from any consulting firm concerning four specified projects. You state you are relying on prior rulings with respect to some of the requested information. *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). Although the department takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of third parties. Accordingly, the department states, and provides documentation showing, it notified the third parties of the requests for information and of their right to submit

arguments to this office as to why the submitted information should not be released.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from CP&Y, Huitt-Zollars, Pape-Dawson, and RTG. We have considered the submitted arguments and reviewed the submitted information.

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 CP&Y, Huitt-Zollars, Pape-Dawson, and RTG explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has 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 department may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

CP&Y asserts the answers it provided in its Question and Response Templates are protected under section 552.104 of the Government Code. Huitt-Zollars asserts portions of its Statements of Qualification are protected under section 552.104 of the Government Code. Pape-Dawson and RTG assert their entire Statements of Qualification are protected under section 552.104 of the Government Code. Section 552.104(a) 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. CP&Y, Huitt-Zollars, Pape-Dawson, and RTG state they

¹The department notified the following third parties: Arredondo, Zepeda & Brunz, LLC; Baker & Lawson, Inc.; Barnhart Constructors, Inc. d/b/a Barnhart Engineering; Binkley & Barfield, Inc.; Bridgefarmer & Associates; Brock & Bustillos Inc.; Brown & Gay Engineers; Bury Holding, Inc.; CH2M Hill, Inc.; Civil Systems Engineering, Inc.; CivilTech Engineering, Inc.; Cobb, Fendley & Associates, Inc.; Costello, Inc.; CP&Y, Inc. ("CP&Y"); Dannenbaum Engineering Corporation; Don Durnden, Inc. d/b/a Civil Engineering Consultants; Entech Civil Engineers, Inc.; Excelsis, Inc.; 5Engineering, LLC d/b/a FiveEngineering, LLC; Freese and Nichols, Inc.; Global Civil Solutions LLC; Gonzalez-De La Garza & Associates; GRV Integrated Engineering Solutions, LLC; Halff Associates, Inc.; Hayden Consultants, Inc.; HDR Engineering, Inc.; HR Green, Inc.; Huitt-Zollars, Inc. ("Huitt-Zollars"); I.S. Engineers, LLC; Idcus Inc.; IEA Inc.; Jones & Carter, Inc.; K Friese & Associates, Inc.; Kavi Consulting Inc.; Lina T. Ramey & Associates, Inc.; Lockwood, Andrews, & Newman Inc.; Michael Baker, Jr., Inc.; Pape-Dawson Consulting Engineers, Inc. ("Pape-Dawson"); R.G. Miller Engineers, Inc.; Rodriguez Transportation Group, Inc. ("RTG"); Tukay associates Inc.; URS Corporation; and Walter P. Moore & Associates, Inc.

have competitors. In addition, CP&Y, Huitt-Zollars, Pape-Dawson, and RTG state the information at issue, if released, would give competitors an advantage in submitting future competitive bids. After review of the information at issue and consideration of the arguments, we find CP&Y, Huitt-Zollars, Pape-Dawson, and RTG have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we marked under section 552.104(a) of the Government Code.

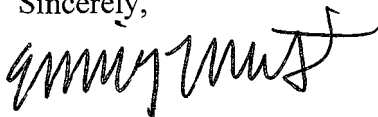
We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department may withhold the information we marked under section 552.104(a) of the Government Code. The department must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 641207

Enc. Submitted documents

c: Requestor
(w/o enclosures)

43 Third Parties
(w/o enclosures)