



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2017

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

OR2017-02127

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# 643775.

The Texas Department of Transportation (the "department") received a request for information related to Solicitation No. 601CT000001962. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of several third parties.¹ Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *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) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of

¹The third parties are the following: The Rios Group, Inc. (the "Rios Group"); Cobb, Fendley & Associates, Inc. ("Cobb Fendley"); Halff Associates, Inc. ("Halff"); Teague Nall and Perkins, Inc. ("Teague Nall"); Binkley & Barfield, Inc. ("Binkley"); Surveying and Mapping, LLC ("Surveying and Mapping"); HDR Engineering, Inc. ("HDR"); AIA Engineers, Ltd. ("AIA"); Brown & Gay Engineers, Inc. ("Brown & Gay"); Pape-Dawson Engineers, Inc. ("Pape-Dawson"); Lina T. Ramey & Associates, Incorporated ("Lina T. Ramey"); Lamb-Star Engineering, LP ("Lamb-Star"); PTP Transportation, LLC ("PTP"); Southwest Surveying and Mapping Partners, LLC ("Southwest Surveying"); AZTEC Engineering Group, Inc. ("AZTEC"); and KCI Technologies, Inc. ("KCI").

exception to disclosure under the circumstances). We have received comments from Cobb Fendley, Halff, and Pape-Dawson. We have considered the submitted arguments and reviewed the submitted information.

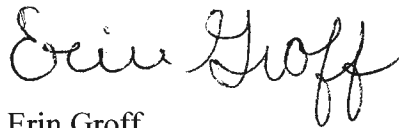
Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the Rios Group, Teague Nall, Binkley, Surveying and Mapping, HDR, AIA, Brown & Gay, Lina T. Ramey, Lamb-Star, PTP, Southwest Surveying, AZTEC, or KCI explaining why their information should not be released. Therefore, we have no basis to conclude these 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 department may not withhold the submitted information on the basis of any proprietary interests the Rios Group, Teague Nall, Binkley, Surveying and Mapping, HDR, AIA, Brown & Gay, Lina T. Ramey, Lamb-Star, PTP, Southwest Surveying, AZTEC, or KCI may have in the information.

Cobb Fendley, Halff, and Pape-Dawson assert their information is protected under section 552.104 of the Government Code. 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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. Cobb Fendley, Halff, and Pape-Dawson state they have competitors. In addition, Cobb Fendley, Halff, and Pape-Dawson state the information at issue, if released, would give their competitors an advantage. After review of the information at issue and consideration of the arguments, we find Cobb Fendley, Halff, 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 Pape-Dawson's information in its entirety, as well as Cobb Fendley's and Halff's information we have marked, under section 552.104(a) of the Government Code. As no other exceptions to disclosure are raised, 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 643775

Enc. Submitted documents

c: Requestor
(w/o enclosures)

16 Third Parties
(w/o enclosures)