



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 7, 2017

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

OR2017-02699

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# 645159.

The Texas Department of Transportation (the "department") received a request for specified responses to four specified requests for proposals. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of AECOM Technical Services ("AECOM"); DKS Associates; Jacobs Engineering Group, Inc.; Arcadis U.S., Inc.; CDM Smith, Inc.; Pape-Dawson Consulting Engineers, Inc. ("Pape-Dawson"); CP&Y, Inc. ("CP&Y"); HDR Engineering, Inc.; IEA, Inc.; I.S. Engineers, L.L.C.; AIA Engineers, Ltd.; Parsons Brinckerhoff, Inc.; Burns & McDonnell Engineering Company, Inc.; HALFF Associates, Inc. ("HALFF"); CH2M HILL, Inc.; LJA Engineering, Inc. ("LJA"); Civil Corp., L.L.C.; BridgeFarmer & Associates, Inc.; Entech Civil Engineers, Inc.; Civil Systems Engineering, Inc. ("Civil Systems"); and Jones & Carter, Inc. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their 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 AECOM, LJA, HALFF, Pape-Dawson, Civil Systems, and CP&Y. We have considered the submitted

arguments and reviewed the submitted information, a portion of which consists of a representative sample.<sup>1</sup>

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 Pape-Dawson, HALFF, Civil Systems, CP&Y, AECOM, and LJA explaining why portions of each company's submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests in the 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 submitted information on the basis of any proprietary interests the remaining third parties may have in it.

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). 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The department represents the information in Exhibit B pertains to a competitive bidding situation. In addition, the department asserts disclosure of the information in Exhibit B would allow third-party competitors to "tailor their negotiation strategy depending on the competition and undermine the contract negotiation process" which would "result in less competition, to the detriment of the public." After review of the information at issue and consideration of the arguments, we find the department has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold Exhibit B under section 552.104(a) of the Government Code.<sup>2</sup>

Additionally, a private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). As noted above, the "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether

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<sup>1</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>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

it would be a decisive advantage.” *Id.* at 841. Pape-Dawson, HALFF, Civil Systems, CP&Y, AECOM, and LJA state they have competitors. In addition, each of these third parties states release of the information at issue would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Pape-Dawson, HALFF, Civil Systems, CP&Y, AECOM, and LJA 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 Civil Systems, CP&Y, HALFF, and LJA have indicated in their responses, which we have marked, the information AECOM has marked in its response, and the entirety of Pape-Dawson’s response under section 552.104(a) of the Government Code.<sup>3</sup>

In summary, the department may withhold Exhibit B under section 552.104(a) of the Government Code. The department may withhold the information Civil Systems, CP&Y, HALFF, and LJA have indicated in their responses, which we have marked, the information AECOM has marked in its response, and the entirety of Pape-Dawson’s response 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](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,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/som

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Ref: ID# 645159

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

23 Third Parties  
(w/o enclosures)