



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 24, 2017

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

OR2017-11391

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# 659187.

The Texas Department of Transportation (the "department") received a request for contract award information and bid results for specified solicitations.¹ You state the department has released some information. Although you take no position as to whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of AECOM Technical Services, Inc. ("AECOM"); Alliance Geotechnical Group ("AGG"); Bureau Veritas North America Inc. ("Bureau Veritas"); and Johnson, Mirmiran & Thompson, Inc. ("Johnson"). Accordingly, you state you notified these 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

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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 a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

explain applicability of exception in Act in certain circumstances). We have received comments from AECOM, AGG, and Johnson. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note AECOM 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 the department has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Bureau Veritas explaining why the submitted information should not be released. Therefore, we have no basis to conclude Bureau Veritas 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 any portion of the submitted information on the basis of any proprietary interest Bureau Veritas may have in the information.

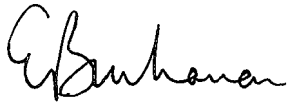
AECOM and Johnson assert portions of their information at issue are protected under section 552.104 of the Government Code. AGG asserts all of its information at issue is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception, which is subject to the test discussed above. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). AECOM, AGG, and Johnson state they have competitors. In addition, AECOM, AGG, and Johnson state the information at issue, if released, would give competitors an advantage in future competitive bidding situations. After review of the information at issue and consideration of the arguments, we find AECOM, AGG, and Johnson 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 marked under section 552.104(a) of the Government Code.² The remaining information must be released.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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,



Emily Buchanan
Assistant Attorney General
Open Records Division

EB/tdw

Ref: ID# 659187

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)