



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 29, 2017

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

OR2017-14601

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# 664210.

The Texas Department of Transportation (the "department") received a request for the winning proposals for eight specified solicitation numbers.<sup>1</sup> 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

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<sup>1</sup>We note the department received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). 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 third parties. Accordingly, you state you notified these third parties of the request for information and of each company's right to submit arguments to this office as to why 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 Act in certain circumstances). We have received comments from AECOM, Aguirre, CP&Y, Halff, Huitt-Zollars, KCI, LAN, Pape-Dawson, and RTG. 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) 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 noted above, as of the date of this letter we have only received comments from AECOM, Aguirre, CP&Y, Halff, Huitt-Zollars, KCI, LAN, Pape-Dawson, and RTG. 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; 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 the remaining third parties may have in the information.

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<sup>2</sup>The department notified the following third parties: AECOM Technical Services, Inc. ("AECOM"); Aguirre & Fields, L.P. ("Aguirre"); AIA Engineers, Ltd.; Arcadis U.S., Inc.; Arredondo, Zepeda & Brunz, LLC; Atkins North America, Inc.; Binkley & Barfield, Inc.; Bridgefarmer & Associates, Inc.; Brown & Gay Engineers, Inc.; Burns & McDonnell Engineering Company, Inc.; CH2M Hill, Inc.; CDM Smith, Inc.; Civil Systems Engineering, Inc.; CivilTech Engineering, Inc.; CP&Y, Inc. ("CP&Y"); Dannenbaum Engineering Corporation; DKS Associates; Entech Civil Engineers, Inc.; Gonzales-De La Garza & Associates; Gunda Corporation, LLC; Halff Associates, Inc. ("Halff"); HDR Engineering, Inc.; HNTB Corporation; HR Green, Inc.; Huitt-Zollars, Inc. ("Huitt-Zollars"); H.W. Lochner, Inc.; IDCUS, Inc.; IEA Inc.; I.S. Engineers; Jacobs Engineering Group, Inc.; Jones & Carter, Inc.; K Friese & Associates, Inc.; Kennedy Consulting, Inc. ("KCI"); Kimley-Horn and Associates, Inc.; Landtech Consultants; LJA Engineering, Inc.; Lockwood, Andrews & Newnam, Inc. ("LAN"); Parkhill, Smith, & Cooper, Inc.; Pape Dawson Engineers, Inc. ("Pape-Dawson"); Parsons Bickerhoff, Inc.; Pierce, Goodwin, Alexander & Linville, Inc.; Poznecki-Camarillo, Inc.; R.G. Miller Engineers, Inc.; RJ Rivera Associates, Inc.; Rodriguez Transportation Group, Inc. ("RTG"); RS&H, Inc.; Stantec Consulting Services Inc.; Volkert, Inc.; and Walter P. Moore and Associates, Inc.

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). A private third party may also invoke this exception, which is subject to the test discussed above. *Boeing*, 466 S.W.3d at 833. AECOM, Aguirre, CP&Y, Halff, Huitt-Zollars, KCI, LAN, Pape-Dawson, and RTG state they have competitors. In addition, AECOM, Aguirre, CP&Y, Halff, Huitt-Zollars, KCI, LAN, Pape-Dawson, and RTG 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, Aguirre, CP&Y, Halff, Huitt-Zollars, KCI, LAN, Pape-Dawson, and RTG have established the release of the information at issue in Exhibit B would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we indicated in Exhibit B under section 552.104(a) of the Government Code.<sup>3</sup>

We note some of the remaining information appears to 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 indicated in Exhibit B under section 552.104(a) of the Government Code. The department must release the remaining information; however, any information subject to copyright may only be released 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](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

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

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Paige Lay". The signature is written in a cursive, flowing style.

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 664210

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

49 Third Parties  
(w/o enclosures)