



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2017

Mr. Jeffrey T. Pender
Deputy General Counsel
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 7811-3941

OR2017-15151

Dear Mr. Pender:

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# 665435.

The Texas Department of Housing and Community Affairs (the "department") received a request for a specified environmental report for a specified development. 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 Phase Engineering, Inc. ("Phase"). Accordingly, you state, and provide documentation showing, you notified the interested third party of the request for information and of its right to submit arguments to this office as to why the information at issue 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 reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request because it does not pertain to the specified environmental report. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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 Phase explaining why the submitted responsive information should not be released. Therefore, we have no basis to conclude Phase has a protected proprietary interest in the information at issue. *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 responsive information on the basis of any proprietary interest Phase may have in it. As no other exceptions to disclosure have been raised, the department must release the submitted responsive 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,



Jahna Ward
Attorney
Open Records Division

JW/som

Ref: ID# 655435

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)