



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 31, 2017

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

OR2017-24870

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# 682298.

The Texas Department of Transportation (the "department") received a request for information pertaining to eleven specified solicitations. 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 addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You claim the information submitted as Exhibit B is excepted from disclosure under section 552.104 of the Government Code. Although you take no position as to whether the remaining information, which you have submitted as Exhibit C, 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>1</sup> *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305

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<sup>1</sup>The department notified the following third parties: CP&Y, Inc. ("CP&Y"); Halff Associates, Inc.; HDR Engineering, Inc.; and Landtech, Inc. ("Landtech").

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 CP&Y and Landtech. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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* Gov't Code § 552.305(d)(2)(B). As noted above, as of the date of this letter we have only received comments from CP&Y and Landtech. 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.

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 submitted as Exhibit B pertains to a pending competitive bidding situation still under negotiation and release of the information at issue will cause harm by reducing competition on competitive bids. After review of the information at issue and consideration of the arguments, we find the department has established the release of this information 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.

CP&Y and Landtech assert their information at issue in Exhibit C is protected under section 552.104 of the Government Code. As noted above, 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 also invoke this exception, which is subject to the test discussed above. *Boeing*, 466 S.W.3d at 833. CP&Y and Landtech state they have competitors. In addition, CP&Y and Landtech state the information at issue, if released, would give competitors an advantage in future competitive bidding situations.

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<sup>2</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.

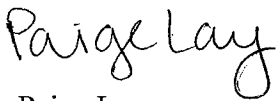
After review of the information at issue and consideration of the arguments, we find CP&Y and Landtech have established the release of the information at issue in Exhibit C, which we indicated, would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we indicated under section 552.104(a) of the Government Code.

In summary, the department may withhold Exhibit B and the information we indicated in Exhibit C 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/gw

Ref: ID# 682298

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

cc: 2 Third Parties  
(w/o enclosures)