



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 22, 2019

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

OR2019-05115

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# 752827.

The Texas Department of Transportation (the "department") received a request for a specified request for proposal and three specified proposals. You state you have released the request for proposal to the requestor. Although the department takes no position as to whether the submitted information is excepted under the Act, the department states release of the submitted information may implicate the proprietary interests of Blanton & Associates, Inc. ("Blanton"); Ecosystem Planning and Restoration, LLC ("Ecosystem"); and Spirit Environmental, LLC ("Spirit"). Accordingly, the department states, and provides documentation showing, it notified Blanton, Ecosystem, and Spirit of the request for information and of the 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 reviewed the submitted information.

Initially, we note the submitted information is not responsive to the instant request for information because it does not pertain to the requested proposal. 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.

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The department received the request for information on December 17, 2018. As of this date, the department has not submitted to this office a copy or representative sample of the information requested. Accordingly, we conclude the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Although the department claims third party interests are at stake, which can provide a compelling reason to withhold information, we have not received comments from the third parties explaining how release of the requested information would affect their proprietary rights. *See* Gov't Code § 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. Further, as the department has not provided a copy of the requested information for our review, we have no basis for finding any of the requested information excepted from disclosure. Thus, we have no choice but to order the department to release the requested information in accordance with section 552.302 of the Government Code.

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,



Lecelle Clarke  
Attorney  
Open Records Division

LC/eb

Ref: ID# 752827

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)