



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 22, 2019

Mr. Nick Barrett  
Program Specialist  
Texas Historical Commission  
P.O. Box 12276  
Austin, Texas 78711-2276

OR2019-05131

Dear Mr. Barrett:

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# 751584.

The Texas Historical Commission (the "commission") received a request for all information pertaining to a specified permit, a named entity, and the entity's application for a specified license.<sup>1</sup> You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Bob Hydrographics, LLC ("Bob") and SWCA Consultants ("SWCA"). Accordingly, you state, and provide documentation showing, you notified Bob and SWCA of the request for information and of their 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 received arguments from Bob

---

<sup>1</sup>We note the commission did not comply with the requirements of section 552.301(e) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, we note section 552.101 of the Government Code and the interests of a third party can provide a compelling reason to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

and SWCA. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 191.004 of the Natural Resources Code, which reads as follows:

- (a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.
- (b) Information specifying the location or nature of an activity covered by a permit or an application for a permit under this chapter is not public information.
- (c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Nat. Res. Code § 191.004. The submitted information consists of archaeological surveys and draft reports prepared by Bob and SWCA for the commission that is related to archaeological surveys and an antiquities permit. The commission asserts the information it marked reveals the locations of archaeological sites. The commission also indicates these archeological sites are state archeological landmarks for purposes of chapter 191 of the Natural Resources Code. *See id.* § 191.092(a). Upon review, we find the marked information qualifies as “information specifying the location of any site or item declared to be a state archeological landmark” and “information specifying details of a survey to locate state archeological landmarks” for purposes of section 191.004. Therefore, the commission must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 191.004 of the Natural Resources Code.

Bob and SWCA assert a specified draft report is protected under section 552.104 of the Government Code. 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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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.” *Id.* at 841. Bob and SWCA represent the information at issue would provide a potential competitive advantage to interested parties. After review of the information at issue and consideration of the arguments, we find Bob and SWCA have established the release of each company’s specified draft report would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the specified draft report under section 552.104(a) of the Government Code.

In summary, the commission must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 191.004 of the Natural Resources Code. The commission may withhold the draft reports we indicated under section 552.104(a) of the Government Code. The commission 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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/gw

Ref: ID# 751584

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 2 Third Parties  
(w/o enclosures)