



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2019

Mr. Brian O'Reilly
Counsel for the North Texas Tollway Authority
Locke Lorde, LLP
600 Congress, Suite 2200
Austin, Texas 78701

OR2019-06081

Dear Mr. O'Reilly:

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# 754109 (NTTA ID 2018-03206)

The North Texas Tollway Authority (the "authority"), which you represent, received a request for information pertaining to a specified request for proposals. You claim the submitted information is subject to a previous request for a ruling. Additionally, you state release of the submitted information may implicate the proprietary interests of ETAN Industries ("ETAN"). Accordingly, you state, and provide documentation showing, you notified ETAN of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from ETAN. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2018-29673 (2018). In response to Open Records Letter No. 2018-29673, ETAN has filed a lawsuit against our office. *See ETAN Industries Group, Inc. v. Ken Paxton, Attorney Gen.*, No. D-1-GN-19-000051 (419th Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in the *ETAN* lawsuit, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public.¹

The remaining submitted information, which is not at issue in the aforementioned lawsuit, is identical to information previously ruled upon by this office. Further, there is no indication the law, facts, and circumstances on which Open Records Letter No. 2018-29673 were based have changed. Accordingly, with regard to the submitted information which is not at issue in the aforementioned lawsuit, we conclude the authority must continue to rely on Open Records Letter No. 2018-29673 as a previous determination and withhold or release the identical information in accordance with the ruling. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

In summary, with regard to the information at issue in this lawsuit, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. The authority must continue to rely on Open Records Letter No. 2018-29673 as a previous determination and withhold or release the remaining submitted information in accordance with that ruling.

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

¹As we are able to make this determination, we need not address the submitted 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 style with a long, sweeping underline that extends to the right.

Paige Lay
Assistant Attorney General
Open Records Division

PS/mo

Ref: ID# 754109

Enc. Submitted documents

c: Requestor
(w/o enclosures)