



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2019

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

OR2019-13653

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# 766722.

The Texas Department of Transportation (the "department") received a request for information pertaining to six specified requests for proposals, including statements of qualification, proposals, scoring notes, and results.¹ You state the department will release some information. You claim a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of seventeen third parties.² Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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

¹The department states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² The third parties are: AIA Engineers, LLC; Atkins North America, Inc. ("Atkins"); BGE, Inc. ("BGE"); CDM Smith, Inc.; Criado and Associates, Inc.; Don Durden, Inc.; Est, Inc.; IEA, Inc.; Jacobs Engineering Group, Inc.; Lamb-Star Engineering, LP; Lina T. Ramey and Associates, Inc.; Pape-Dawson Consulting Engineers, Inc. ("Pape-Dawson"); PTP Transportation, LLC; Raba Kistner, Inc. ("Raba Kistner"); RS&H, Inc.; VRX, Inc. ("VRX"); and Wade Trim Group, Inc.

exception in the Act in certain circumstances). We have received comments from Atkins, BGE, Pape-Dawson, Raba Kistner, and VRX. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.³

Initially, 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 the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude 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 the submitted information on the basis of any proprietary interests 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). You represent Exhibit B pertains to Procurement 601CT0000003609, a procurement still under negotiation. In addition, you state the release of Exhibit B would allow "[a] bidder [to] tailor their negotiation strategy . . . and undermine the contract negotiation process." After review of the information at issue and consideration of the arguments, we find the department has established the release of the information at issue 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.⁴

Atkins, Pape-Dawson, Raba-Kistner, and VRX argue section 552.104 of the Government Code for some of the remaining information. *See* Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing*, 466 S.W.3d 831. These third parties state they have competitors. In addition, these third parties state the information at issue, if released,

³We 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.

⁴As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

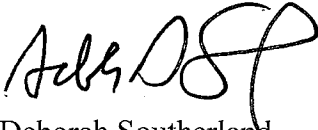
would give their competitors an advantage in submitting competitive bids. After review of the information at issue and consideration of the arguments, we find these third parties have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we marked and indicated under section 552.104(a) of the Government Code.⁵

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



Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 766722

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 17 Third Parties
(w/o enclosures)

⁵As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.