



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2019

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

OR2019-18122

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# 773064.

The Texas Department of Transportation (the "department") received a request for project manager and task leader information submitted by third parties for five specified requests for proposals.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of certain third parties. 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 exception in the Act in certain circumstances). We have received comments from AECOM Technical Services, Inc. ("AECOM"); AIA Engineers LLC ("AIA"); Atkins North America, Inc. ("Atkins"); Binkley & Barfield, Inc. ("Binkley"); CivilTech Engineering, Inc. ("CivilTech"); Cobb, Fendley & Associates, Inc. ("CobbFendley"); CP&Y; Dannenbaum Engineering Corporation ("Dannenbaum"); Halff Associates, Inc. ("Halff"); Hanson Professional Services, Inc.

¹You state the department requested 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).

("Hanson"); Hayden Consultants, Incorporated ("Hayden"); HDR Engineering, Inc. ("HDR"); Huitt-Zollars, Inc. ("Huitt-Zollars"); Lina T. Ramey and Associates, Inc. ("Lina T. Ramey"); LJA Engineering, Inc. ("LJA"); Maldonado-Burkett, LLP ("Maldonado-Burkett"); Pape-Dawson Consulting Engineers, Inc. ("Pape-Dawson"); S & B Infrastructure, Ltd. ("S&B"); Structural Engineering Associates, Inc. ("Structural Engineering"); Vickrey & Associates, Inc. ("Vickrey"); and VRX Inc. ("VRX"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note AIA, Atkins, Binkley, CivilTech, CobbFendley, Dannenbaum, Halff, HDR, Huitt-Zollars, Maldonado-Burkett, Pape-Dawson, Structural Engineering, and VRX each object to disclosure of information the department has not submitted to this office for review. This ruling does not address information that was not submitted by the department and is limited to the information the department has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from AECOM, AIA, Atkins, Binkley, CivilTech, CobbFendley, CP&Y, Dannenbaum, Halff, Hanson, Hayden, HDR, Huitt-Zollars, Lina T. Ramey, LJA, Maldonado-Burkett, Pape-Dawson, S&B, Structural Engineering, Vickrey, and VRX. Thus, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 of the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

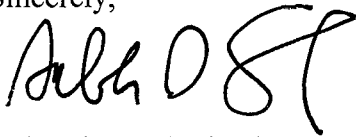
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 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. AECOM, AIA, Atkins, Binkley, CivilTech, CobbFendley, Dannenbaum, Halff, Hayden, HDR, Huitt-Zollars, Lina T. Ramey, LJA, Maldonado-Burkett, Pape-Dawson, S&B, Structural Engineering, Vickrey, and VRX each state they have competitors. In addition, these third parties each state release of the information at issue would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find AECOM, AIA, Atkins, Binkley, CivilTech, CobbFendley, Dannenbaum, Halff, Hayden, HDR, Huitt-Zollars, Lina T. Ramey, LJA, Maldonado-Burkett, Pape-Dawson, S&B, Structural Engineering, Vickrey, and VRX 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 pertaining to AECOM, AIA, Atkins, Binkley, CivilTech, CobbFendley, Dannenbaum, Halff, Hayden, HDR, Huitt-Zollars, Lina T. Ramey, LJA, Maldonado-Burkett, Pape-Dawson, S&B, Structural Engineering, Vickrey, and VRX in its entirety, as well as the information we marked, under section 552.104(a) of the Government Code.² 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# 773064

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Parties
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.