



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 3, 2019

Ms. Angela Hough  
Assistant General Counsel  
North Texas Tollway Authority  
P.O. Box 260729  
Plano, Texas 75026

OR2019-18364

Dear Ms. Hough:

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# 773760 (Reference No. 2019-01072).

The North Texas Tollway Authority (the "authority") received a request for information regarding professional legal services contracts. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of several third parties.<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for

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<sup>1</sup>Abernathy Roeder Boyd & Joplin, P.C. ("Abernathy"); Carrington Coleman Sloman & Blumenthal, L.L.P.; Chen Malin, L.L.P. ("Chen"); Clark Hill Strasburger ("Clark"); Estes Thorne & Carr, P.L.L.C. ("Estes"); Eversheds Sutherland, L.L.P.; Farros-Gillespie and Heath, L.L.P.; Foley Gardere Foley & Lardner, L.L.P. ("Foley"); Jackson Walker, L.L.P.; Locke Lord, L.L.P. ("Locke"); Lynn Pinker Cox Hurst; McCall Parkhurst & Horton, L.L.P. ("McCall"); Mahomes Bolden, P.C.; Law Offices of Malouf & Nockles; Reed Smith, L.L.P. ("Reed"); and Wick Phillips Gould & Martin, L.L.P.

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 comments from Abernathy, Chen, Clark, Estes, Foley, Locke, Mahomes, McCall, and Reed. We have considered the submitted arguments and reviewed the submitted information.

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) of the Government Code 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 those 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 authority may not withhold any portion of the submitted information on the basis of any proprietary interest 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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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 840. Abernathy, Chen, Clark, Estes, Foley, Locke, Mahomes, McCall, and Reed state they have competitors. Abernathy, Chen, Clark, Estes, Foley, Locke, Mahomes, McCall, and Reed also state the information at issue, if released, would give a competitor an advantage in submitting future competitive bids. We note these third parties seek to withhold the terms of contracts. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information

Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find Abernathy, Chen, Clark, Estes, Foley, Locke, Mahomes, McCall, and Reed have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the information pertaining to Abernathy, Clark, Estes, Locke, Mahomes, and McCall in its entirety and the information Chen, Foley, and Reed seek to withhold, which we have marked, under section 552.104(a) of the Government Code.<sup>2</sup>

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”<sup>3</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Open Records Decision No. 684 (2009). Accordingly, the authority must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the authority may withhold the information pertaining to Abernathy, Clark, Estes, Locke, Mahomes, and McCall in its entirety and the information we have marked under section 552.104(a) of the Government Code. The authority must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The authority 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

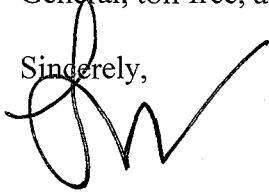
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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, appearing to read 'Jahna Ward', with a large, sweeping flourish extending to the right.

Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/gw

Ref: ID# 773760

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Parties  
(w/o enclosures)