



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2019

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

OR2019-19817

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# 776261.

The Texas Department of Transportation (the "department") received a request for information pertaining to 22 solicitations. The department states it will withhold or release some of the requested information in accordance with previous determinations. Although the department takes no position regarding whether the submitted information is excepted from disclosure, the department states its release may implicate the proprietary interests of several third parties.¹ Accordingly, the department states, and provides documentation showing, it notified the interested third parties 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 id.* § 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 AIA, Atkins, CDM, CP&Y, HDR, LAN, KCI, and MBI. We have considered the submitted arguments and reviewed the submitted information.

¹The department informs us it notified the following interested third parties of the request: AIA Engineers, LLC ("AIA"); Arup Texas, Inc.; Atkins North America, Inc. ("Atkins"); CDM Smith, Inc. ("CDM"); CP&Y, Inc. ("CP&Y"); Criado & Associates, Inc.; HDR Engineering, Inc. ("HDR"); HNTB Corporation; IEA, Inc.; Kennedy Consulting, Inc. ("KCI"); Lockwood, Andrews & Newnam, Inc. ("LAN"); Michael Baker International, Inc. ("MBI"); Omega Engineers, Inc.; R2M Engineering, LLC; Structural Engineering Associates, Inc.; Transystems Corporation; Urban Engineers, Inc.; Walter P. Moore and Associates, Inc.; and WSP USA Inc.

Initially, we note KCI seeks to withhold information the department did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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 information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest 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, 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. Therefore, the department may not withhold 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." *Id.* § 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. AIA, Atkins, CDM, CP&Y, HDR, LAN, KCI, and MBI state they have competitors. In addition, these third parties explain release of the information at issue would give their competitors an advantage. After review of the information at issue and consideration of the arguments, we find AIA, Atkins, CDM, CP&Y, HDR, LAN, KCI, and MBI have established the release of the information at issue would give an advantage to a competitor or bidder. Accordingly, we conclude the department may withhold AIA's, CDM's, HDR's, LAN's, and MBI's information in their entireties and Atkins', CP&Y's, and KCI's information we marked and indicated 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.

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

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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a long horizontal flourish extending to the right.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 776261

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 19 Third Parties
(w/o enclosures)