



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2019

Mr. Allan Meesey
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2019-29346

Dear Mr. Meesey:

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# 792059.

The Texas Department of Transportation (the "department") received three requests from the same requestor for information pertaining to eight specified competitive procurements.¹ 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.² 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* Gov't Code 552.305(d); *see also* Open Records Decision No. 542

¹ We note the department asked for and received clarifications regarding these requests. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² The department informs us it notified the following interested third parties of the request: AECOM Technical Services, Inc.; Alliance-Texas Engineering Co. d/b/a Alliance Transportation Group, Inc. ("Alliance"); Arcadis U.S. Inc. ("Arcadis"); BGE, Inc. ("BGE"); Cobb, Fendley & Associates, Inc. ("Cobb"); Consor Engineers, LLC ("Consor"); HDR Engineering, Inc. ("HDR"); Jacobs Engineering Group, Inc. ("Jacobs"); Kimley-Horn and Associates, Inc.; Maldonado-Burkett, LLP ("MB"); Othon, Inc.; Raba Kistner, Inc. ("Raba"); and Traf-IQ, Inc. ("Traf-IQ").

(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 Alliance, Arcadis, BGE, Cobb, Consor, HDR, Jacobs, MB, Raba, and Traf-IQ.

Initially, we note some of the requested information was the subject of a previous requests for information, in response to which this office issued Open Records Letter Nos. 2018-16868 (2019) and 2018-25878 (2018). As we have no indication the law, facts, and circumstances on which the prior rulings were based have changed, the department may continue to rely on Open Records Letter Nos. 2018-16868 and 2018-25878 as previous determinations and withhold or release the information at issue in accordance with those rulings. *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 that information is or is not excepted from disclosure).

Next, we note the department did not submit information pertaining to one of the specified competitive procurements for our review. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We note MB asserts exceptions to the required public disclosure of information the department has not submitted for our review. This ruling does not address information beyond what the authority has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information. *See id.*

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 id.* § 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.

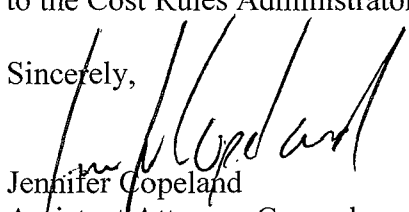
Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 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. Alliance, Arcadis, BGE, Cobb, Consor, HDR, Jacobs, MB, Raba, and Traf-IQ 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 Alliance, Arcadis, BGE, Cobb, Consor, HDR, Jacobs, MB, Raba, and Traf-IQ 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 Alliance’s, BGE’s, Consor’s, HDR’s, Jacobs’s, Raba’s, and Traf-IQ’s information in their entireties and the information we indicated, belonging to Arcadis, Cobb, and MB, under section 552.104(a) of the Government Code.³

In summary, the department may continue to rely on Open Records Letter Nos. 2018-16868 and 2018-25878 as previous determinations and withhold or release the information at issue in accordance with those rulings. The department may withhold Alliance’s, BGE’s, Consor’s, HDR’s, Jacobs’s, Raba’s, and Traf-IQ’s information in their entireties and the information we indicated, belonging to Arcadis, Cobb, and MB, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jennifer Copeland
Assistant Attorney General
Open Records Division

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³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)

13 Third Parties
(w/o enclosures)