



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 26, 2020

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

OR2020-06178

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# 813581.

The Texas Department of Transportation (the "department") received a request for information pertaining to a specified solicitation number. You indicate you released some information to the requestor. 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 unspecified third parties. Accordingly, you state, and provide documentation showing, the department notified the third parties of the request for information and of the right 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 Tetra Tech, Inc. ("Tetra Tech") and 1Priority Environmental Services, LLC ("1Priority").¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Tetra Tech argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the department

¹ We note 1Priority makes no arguments against disclosure of its information at issue and raises no exceptions to disclosure under the Act.

has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information.²

Next, we note the submitted information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-25033 (2016). In Open Records Letter No. 2016-25033, we concluded the department must withhold (1) the information we have marked under section 552.110(b) of the Government Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with the MPA; (3) the motor vehicle record information we have marked under section 552.130 of the Government Code; (4) the insurance policy numbers we have marked under section 552.136 of the Government Code; and must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. We note Tetra Tech now seeks to withhold some of their information which may have been previously ordered released in the prior ruling under section 552.110 of the Government Code. Because information subject to section 552.110 is deemed confidential by law, we will address the claims under section 552.110 for any previously released information. Furthermore, except with regard to Tetra Tech's claim under section 552.110, there is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, except with regard to Tetra Tech's claim under section 552.110, for the submitted information that is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2016-25033 (2016) as a previous determination and withhold or release the identical information in accordance with that ruling. *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).

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 only received comments from Tetra Tech explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining unspecified 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, that release of requested information would cause that party substantial

² As we are able to make this determination, we need not address the arguments against disclosure of the information at issue.

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 interest the remaining unspecified third parties may have in the information.

Tetra Tech claims its pricing information is excepted under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

Tetra Tech contends some of its information is commercial or financial information, the release of which would cause substantial competitive harm to the company. We note Tetra Tech was a winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep’t of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). In addition, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov’t Code § 552.022(a)(3); Open Records Decision No. 541 at 8 (1990). Upon review, we find Tetra Tech has not established any of the submitted information constitutes commercial or financial information the disclosure of which would cause the company substantial competitive harm. *See* Gov’t Code § 552.110(b). Accordingly, the department may not withhold any of the remaining information at issue on this basis.

In summary, for the submitted information that is identical to the information previously requested and ruled upon by this office, the department may continue to rely on Open Records Letter No. 2016-25033 (2016) as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the information at issue was not previously released pursuant to the previous ruling, the department must release the submitted 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,

A handwritten signature in black ink, appearing to read "Pearlie Gault". The signature is written in a cursive style with a large, stylized initial "P".

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 813581

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)