



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2020

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

OR2020-16584

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# 832968.

The Texas Department Of Transportation (The "Department") Received A Request For Certain Proposals Received In Response To Solicitation Number 601440000019326, As Well As Evaluation Materials. You State The Department Has Released Some Information To The Requestor. Although The Department Takes No Position As To Whether The Submitted Information Is Excepted Under The Act, The Department States Release Of The Submitted Information May Implicate The Proprietary Interests Of Third Parties. Accordingly, The Department States It Notified These 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 Nixon Engineering, LLC ("Nixon"). We Have Considered The Submitted Arguments And Reviewed The Submitted Information.

Initially, We Note Nixon Objects 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.¹ *See* Gov't Code § 552.301(E)(1)(D) (Governmental Body Requesting Decision From Attorney General Must Submit Copy Of Specific Information Requested).

Next, 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 Any Remaining Third Parties Explaining Why The Information At Issue Should Not Be Released. Therefore, We Have No Basis To Conclude Any Remaining Third Party Has A Protected Proprietary Interest In The Information At Issue. *See, E.G., Id.* § 552.110 (Requiring The Provision Of Specific Factual Evidence Demonstrating The Applicability Of The Exception). Accordingly, The Department May Not Withhold The Submitted Information On The Basis Of Any Proprietary Interest Any Remaining Third Parties May Have In The Information.

Section 552.110(C) Of The Government Code Expects From Disclosure “Commercial 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[.]” *Id.* § 552.110(C). Nixon Argues Some Of Its Information Consists Of Commercial Or Financial Information Subject To Section 552.110(C). Nixon Has Demonstrated Portions Of The Information At Issue Constitute Commercial Or Financial Information, The Release Of Which Would Cause Substantial Competitive Harm. Accordingly, The Department Must Withhold The Information We Have Marked Under Section 552.110(C) Of The Government Code.² However, We Find Nixon Has Failed To Provide Specific Factual Evidence Demonstrating Any Portion Of The Remaining Information At Issue Constitutes Commercial Or Financial Information, The Release Of Which Would Result In Substantial Competitive Harm. Therefore, The Department May Not Withhold Any Of The Remaining Information At Issue Under Section 552.110(C) Of The Government Code.

Section 552.110(B) Of The Government Code States “Information Is [Excepted From Required Disclosure] If It Is Demonstrated Based On Specific Factual Evidence That The Information Is A Trade Secret.” *See Id.* § 552.110(B). Section 552.110(A) Defines A Trade Secret As All Forms And Types Of Information If:

- (1) The Owner Of The Trade Secret Has Taken Reasonable Measures Under The Circumstances To Keep The Information Secret; And
- (2) The Information Derives Independent Economic Value, Actual Or Potential, From Not Being Generally Known To, And Not Being

¹ As we are able to make this determination, we need not address the arguments against disclosure of this information.

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

Readily Ascertainable Through Proper Means By, Another Person Who Can Obtain Economic Value From The Disclosure Or Use Of The Information.

Id. § 552.110(A). Nixon Asserts Some Of Its Remaining Information Consists Of Trade Secrets Subject To Section 552.110(B). Upon Review, We Find Nixon Has Failed To Provide Specific Factual Evidence Demonstrating Any Portion Of The Remaining Information At Issue Is A Trade Secret. Therefore, The Department May Not Withhold Any Of The Remaining Information At Issue Under Section 552.110(B) Of The Government Code.

Section 552.1101 Of The Government Code Provides, In Relevant Part:

(a) . . . [I]nformation Submitted To A Governmental Body By A Vendor, Contractor, Potential Vendor, Or Potential Contractor In Response To A Request For A Bid, Proposal, Or Qualification Is Excepted From The Requirements Of Section 552.021 If The Vendor, Contractor, Potential Vendor, Or Potential Contractor That The Information Relates To Demonstrates Based On Specific Factual Evidence That Disclosure Of The Information Would:

(1) Reveal An Individual Approach To:

(A) Work;

(B) Organizational Structure;

(C) Staffing;

(D) Internal Operations;

(E) Processes; Or

(F) Discounts, Pricing Methodology, Pricing Per Kilowatt Hour, Cost Data, Or Other Pricing Information That Will Be Used In Future Solicitation Or Bid Documents; And

(2) Give Advantage To A Competitor.

Id. § 552.1101(A). Nixon Asserts Disclosure Of Some Of Its Remaining Information Would Reveal An Individual Approach To Its Work, Organizational Structure, Staffing, Internal Operations, And Processes That Will Be Used In Future Solicitations Or Bid Documents. Upon Review, We Find Nixon Has Failed To Provide The Specific Factual Evidence Necessary To Withhold Any Of The Remaining Information At Issue Under Section 552.1101(A), And The Department May Not Withhold Any Of The Remaining Information At Issue On That Basis.

Section 552.101 Of The Government Code Expects “Information Considered To Be Confidential By Law, Either Constitutional, Statutory, Or By Judicial Decision.”³ *Id.* § 552.101. Section 552.101 Encompasses The Doctrine Of Common-Law Privacy, Which Protects Information That Is (1) Highly Intimate Or Embarrassing, The Publication Of Which Would Be Highly Objectionable To A Reasonable Person, And (2) Not Of Legitimate Concern To The Public. *Indus. Found. V. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To Demonstrate The Applicability Of Common-Law Privacy, Both Prongs Of This Test Must Be Satisfied. *Id.* At 681-82. Types Of Information Considered Intimate And Embarrassing By The Texas Supreme Court Are Delineated In *Industrial Foundation*. *Id.* At 683. This Office Has Found Personal Financial Information Not Relating To A Financial Transaction Between An Individual And A Governmental Body Is Excepted From Required Public Disclosure Under Common-Law Privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (Sources Of Income Not Related To Financial Transaction Between An Individual And A Governmental Body Protected Under Common-Law Privacy). Upon Review, We Find A Portion Of The Remaining Information Satisfies The Standard Articulated By The Texas Supreme Court In *Industrial Foundation*. Thus, The Department Must Withhold The Information We Have Marked Under Section 552.101 Of The Government Code In Conjunction With Common-Law Privacy.

Section 552.130 Of The Government Code Provides Information Relating To A Motor Vehicle Operator’s License, Driver’s License, Motor Vehicle Title Or Registration, Or Personal Identification Document Issued By An Agency Of This State Or Another State Or Country Is Excepted From Public Release. *See* Gov’t Code § 552.130. Accordingly, The Department Must Withhold Any Discernible License Plates In The Remaining Information Under Section 552.130 Of The Government Code.

In Summary, The Department Must Withhold The Information We Have Marked Under Section 552.110(C) Of The Government Code. The Department Must Withhold The Information We Have Marked Under Section 552.101 Of The Government Code In Conjunction With Common-Law Privacy. The Department Must Withhold Any Discernible License Plates In The Remaining Information Under Section 552.130 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->

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

[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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

Ref: ID# 832968

Enc. Submitted Documents

C: Requestor
(w/o Enclosures)

1 Third Party
(w/o Enclosures)