



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2020

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2485

OR2020-17152

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# 834633.

The Texas Department of Transportation (the "department") received a request for certain information pertaining to a specified solicitation.¹ You state you will release 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 C2 Land, LLC, d/b/a C2 Land Resources, LLC; Cobb, Fendley & Associates, Inc. ("CobbFendley"); O. R. Colan Associates, LLC; ORC Utility & Infrastructure Land Services, LLC; Overland Pacific & Cutler, LLC; and Postmodern Global Solutions, LLC. Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of their 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 CobbFendley. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note CobbFendley 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

¹ We note the department may have not complied with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interests of third parties can provide compelling reasons to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from CobbFendley. Thus, we have no basis to conclude any of the remaining interested third parties has a protected proprietary interest in the submitted information. *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 any of the submitted information on the basis of any proprietary interest any of the remaining interested third parties may have in the information.

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). CobbFendley asserts disclosure of some of its information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, and pricing and give advantage to a competitor. Upon review, we find CobbFendley has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the department must withhold the information we have marked under section 552.1101 of the Government Code. However, we find CobbFendley 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 it on that basis.

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.”² *Id.* § 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. Accordingly, the department must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.1101 of the Government Code. The department must withhold the insurance policy numbers in the submitted information under section 552.136 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/rm

Ref: ID# 834633

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)

² 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).