



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2020

Ms. Ashley Harden
General Counsel
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2020-32031

Dear Ms. Harden

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# 858815.

The Texas Water Development Board (the "board") received a request for information pertaining to a specified request for qualifications.¹ You state you have released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Daniel B. Stephens & Associates, Inc.; HDR Engineering ("HDR"); INTERA, Inc.; and WSP USA, Inc. Accordingly, you state, and provide documentation showing, you notified these 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 (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 arguments from HDR. We have considered the submitted arguments and reviewed the submitted information.

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

¹ We note the board sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

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 submitted information should not be released. Therefore, we have no basis to conclude those third parties have protected proprietary interests 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 board may not withhold any portion of the submitted information related to those third parties on the basis of any proprietary interest they 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). HDR asserts disclosure of its information would reveal an individual approach to organizational structure, staffing, and internal operations and give advantage to a competitor. Upon review, we find HDR has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the board must withhold the information we marked under section 552.1101 of the Government Code.² However, we find HDR has failed to provide the specific factual evidence necessary to withhold any of

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

the remaining information at issue under section 552.1101(a) of the Government Code, and the board may not withhold it on that basis.

Section 552.110(c) of the Government Code excepts 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). HDR argues portions of its information consist of commercial or financial information subject to section 552.110(c). Upon review, we find HDR has demonstrated some of the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the board must withhold the information we marked under section 552.110(c) of the Government Code; however, the board may only withhold the customer information we marked to the extent it is not publicly available on HDR’s website.³ Additionally, we find HDR has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the board 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 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). HDR argues its information consists of trade secrets subject to section 552.110(b). Upon review, however, we find HDR has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the board may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

In summary, the board must withhold the information we marked under section 552.1101 of the Government Code. The board must withhold the information we marked under section 552.110(c) of the Government Code; however, the board may only withhold the customer information we marked to the extent it is not publicly available on HDR’s website. The board must release the remaining information.

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

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/rm

Ref: ID# 858815

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)