



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2022

Ms. Audra Gonzalez Welter
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2022-02737

Dear Ms. Welter:

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# 927151 (ORR# R007938-102121).

The Texas Department of Transportation (the "department") received a request for information pertaining to a particular project, including the winning proposal. You state the department will release some information to the requestor. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of Halff Associates, Inc. ("Halff").¹ Accordingly, you state the department notified Halff 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 Halff. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Halff argues against the release of information the department has not submitted to this office for our review. This ruling does not address information that was

¹ We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness. *See id.* §§ 552.007, .302, .352. Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the department's violation of section 552.301 in requesting this decision.

not submitted by the department and is limited to the information the department has submitted for our review.² *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.1101 of the Government Code provides, in relevant part, as follows:

(a) Except as provided by Section 552.0222, information 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 contract 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) organization 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Halff raises section 552.1101(a) of the Government Code for the submitted information, asserting disclosure of the information at issue would reveal an individual approach to work, organizational structure, staffing, internal operations, and pricing methodology. Upon review, we find Halff 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(a) of the Government Code; however, to the extent the customer information at issue is made available to the public by Halff, including but not limited to on its website or social media accounts, it may not be withheld under section 552.1101(a). However, we find some of the remaining information consists of information

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

subject to section 552.0222(b), and may not be withheld on the basis of section 552.1101(a). *See id.* In addition, we find Halff has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is subject to section 552.1101(a). Therefore, the department may not withhold any portion of the remaining information at issue under section 552.1101(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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 927151

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)