



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2022

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

OR2022-08779

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# 937885 (PIR Nos. R010147-010722 & R010572-012022).

The Texas Department of Transportation (the "department") received two requests from different requestors for information pertaining to a specified solicitation. You state the department has released some information to the requestors. We understand the department has redacted access device numbers pursuant to section 552.136(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ Although you raise no exceptions to disclosure, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state you notified these third parties of the requests for information and of the right to submit arguments to this office as to why the information at issue should not be released.² *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 CDR, Metric, and Tetra. We have considered the submitted arguments and reviewed the submitted information.

¹ Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

² The notified third parties are: CDR Maguire, Inc. ("CDR"); Metric Engineering, Inc. ("Metric"); Neel-Schaffer; Ninyo & Moore Geotechnical and Environmental Sciences Consultants; and Tetra Tech, Inc. ("Tetra").

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* 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 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 department may not withhold any portion of the submitted information related to those parties on the basis of any proprietary interest they may have in the information.

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). CDR, Metric, and Tetra argue their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find CDR has demonstrated a portion 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 marked under section 552.110(c) of the Government Code.³ However, we find CDR, Metric, and Tetra have 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 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 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). CDR, Metric, and Tetra argue some of the remaining information consists of trade secrets subject to section 552.110(b). Upon review, we find CDR, Metric, and Tetra have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the department may not

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

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). CDR, Metric, and Tetra assert disclosure of some of the remaining information would reveal an individual approach to work, organizational structure, staffing, internal operations, and processes and give advantage to a competitor. However, we find CDR, Metric, and Tetra have failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a) of the Government Code, and the department may not withhold it on that basis.

In summary, the department must withhold the information we marked under section 552.110(c) of the Government Code and 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/be

Ref: ID# 937885

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: 5 Third Parties
(w/o enclosures)