

Office of the Attorney General
State of Texas
Informal Letter Ruling No. OR2017-13250
June 15, 2017

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

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# 662163.

The Texas Department of Transportation (the "department") received a request for information pertaining to a specified request for qualifications.¹ Although you take no position as to whether the submitted information is exempted under the Act, you state release of this information may implicate the proprietary interests of several third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 comments from Kennedy Consulting, Inc. ("Kennedy Consulting"). We have considered the submitted arguments and reviewed the submitted information.

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\(d\)](#) 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 any remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party has a protected proprietary interest in the submitted information. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

Kennedy Consulting argues [section 552.104 of the Government Code](#) for some of the submitted information. [Section 552.104\(a\) of the Government Code](#) exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." [Gov't Code § 552.104\(a\)](#). A private third party may invoke this exception. [Boeing Co. v. Paxton](#), 466 S.W.3d 831 (Tex. 2015). The "test under [section 552.104](#) is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Kennedy Consulting states it has competitors. It further state release of the information at issue would give a competitive advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Kennedy Consulting has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude, the department may withhold

Kennedy Consulting's information we marked under [section 552.104\(a\) 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

Footnotes

- ¹ We note the department 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 \(Tex. 2010\)](#) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).