



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2005

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

OR2005-10211

Dear Ms. Alexander:

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# 236094.

The Texas Department of Transportation (the "department") received a request for "a complete copy of the detailed proposal by Raytheon [Company] to be the state's provider of a statewide open-road toll collection system." You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. Further, you state that the requested information may be subject to third party proprietary interests. You indicate that, pursuant to section 552.305 of the Government Code, you notified Raytheon Company ("Raytheon") of the request and of its opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted proposal from Raytheon.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You assert the majority of the submitted information is confidential under section 223.204 of the Transportation Code, which provides in relevant part:

(a) To encourage private entities to submit proposals under this subchapter, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Sections 223.203(b)(1) and (2), unless the private entity consents to the disclosure of the information; [and]

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement, unless the private entity consents to the disclosure of the information or material[.]

Transp. Code § 223.204(a)(1)-(2). Section 223.203 of the Transportation Code provides in relevant part:

(b) The department shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

(1) information regarding the proposed project location, scope, and limits; [and]

(2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project[.]

*Id.* at § 223.203(b)(1)-(2). Subject to limitations on department financial participation, “the department may enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a . . . toll project[.]” *Id.* § 223.201(a)(1); *see id.* § 223.202. Section 223.201 of the Transportation Code defines a “comprehensive development agreement” as “an agreement that, at a minimum, provides for the design and construction, rehabilitation, expansion, or improvement of a [toll project] and may also provide for the financing, acquisition, maintenance, or operation of a [toll project].” *Id.* § 223.201(b); *see id.* § 223.201(a).<sup>1</sup>

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<sup>1</sup>Sections 223.201 through 223.204 of the Transportation Code were enacted by the 79<sup>th</sup> Texas Legislature in 2005. Added by Act of June 14, 2005, 79th Leg., R.S., H.B. 2702, ch. 281, 2005 Tex. Sess. Law Serv. 778 (Vernon).

You indicate the submitted information from Raytheon is a proposal for a comprehensive development agreement with the department regarding a toll project. You inform us that Raytheon has not consented to release of the requested proposal. You also inform us that the department has not awarded a final contract for the project at issue. Based on your representations and our review of the submitted information, we conclude that, to the extent the submitted information does not come within subsections 223.203(b)(1) and (2), it is confidential pursuant to section 223.204 of the Transportation Code and must be withheld under section 552.101 of the Government Code.

To the extent the submitted information does come within subsections 223.203(b)(1) and (2), it is not confidential under section 223.204 of the Transportation Code and may not be withheld under section 552.101. We now consider whether the information not made confidential under section 223.204 of the Transportation Code is otherwise excepted from disclosure.

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, Raytheon has not submitted to this office any reasons explaining why its proposal should not be released. We thus have no basis for concluding that any portion of the submitted proposal constitutes proprietary information, and none of it may be withheld on that basis. *See, e.g.*, Gov't Code § 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 (1990).

In summary, to the extent the submitted information does not come within subsections 223.203(b)(1) and (2), it is confidential pursuant to section 223.204 of the Transportation Code and must be withheld under section 552.101 of the Government Code. To the extent the submitted information does come within subsections 223.203(b)(1) and (2), it must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 236094

Enc. Submitted documents

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Mr. Mike Prout  
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