



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2011

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2011-09063

Dear Ms. Brewer:

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# 421686.

The City of Frisco (the "city"), which you represent, received a request for all proposals, excluding the requestor's, submitted in response to RFQ #1007-050, Engineering Services Automated Pavement Condition Survey. You assert portions of the responsive information are subject to a previous determination. You claim the responsive information is excepted from disclosure under section 552.110 of the Government Code. Further, you state release of the responsive information may implicate the proprietary interests of Data Transfer Solutions, L.L.C. ("Data Transfer Solutions"), Dynatest Consulting ("Dynatest"), Fugro Consultants ("Fugro"), and IMS Infrastructure Management Services ("IMS"). Accordingly, you state you notified these third parties of the request for information and their 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 Dynatest. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state the proposals of Data Transfer Solutions, Dynatest, and IMS were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-08308 (2011). In that ruling, we concluded the city must withhold the information we marked in Dynatest's proposal under section 552.110(a) of the

Government Code and the remaining information must be released. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2011-08308 as a previous determination and withhold or release the proposals of Data Transfer Solutions, Dynatest, and IMS in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Although the city argues that the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the city's argument under section 552.110. 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) 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, Fugro has not submitted arguments to this office explaining why its information, which was not at issue in the previous determination, should not be released. We thus have no basis to conclude release of the information at issue will harm Fugro's proprietary interests. *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 (1990). Accordingly, the city may not withhold any of Fugro's submitted proposal on the basis of any proprietary interest Fugro may have in the information.

In summary, the city must continue to rely on Open Records Letter No. 2011-08308 as a previous determination and withhold or release the proposals of Data Transfer Solutions, Dynatest, and IMS in accordance with that ruling. The city must release Fugro's proposal.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Jennifer Lynn Luttrall
Assistant Attorney General
Open Records Division

JLU/dls

Ref: ID # 421686

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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