



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2012

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

OR2012-03641

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# 447637.

The Texas Department of Transportation (the "department") received a request for information, including the amount and product specified in each bidder's bid for a specified solicitation. Although you take no position on the public availability of the requested information, you state the requested information may implicate the proprietary interests of third parties. Accordingly, you inform us you notified DC Group, Inc., United Power and Battery, On Computer Services, and Storage Battery Systems ("SBS") of the request and of their right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* 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 under the Act in certain circumstances). We have received comments from SBS. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). The department received the request for information on December 15, 2011.

You note the department was closed on December 23, 2011 and December 26, 2011 for holidays. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(e) by January 3, 2012. You indicate the required information was hand-delivered to our office on January 3, 2012. However, the envelope in which the department provided the information required by subsection 552.301(e) was received by this office via interagency mail on January 4, 2012. The department has provided no evidence these communications were deposited into the interagency mail within the applicable deadline. *See id.* § 552.308(b) (state agency meets deadline if the request, notice, or other writing is sent by interagency mail and the agency provides evidence sufficient to establish that the request was deposited in interagency mail within the deadline period). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider whether any of the responsive information may be excepted under the Act.

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, we have only received comments from SBS on why their submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have protected proprietary interests 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 (1990) at 3. Accordingly, the department may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

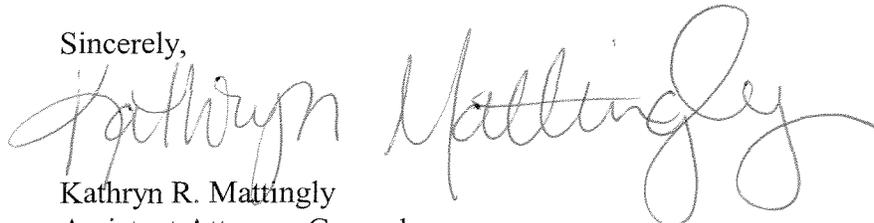
SBS generally asserts that its information "should not be disclosed unless [SBS is] the successful bidder." Further, SBS objects to the release of the information at issue because SBS is concerned that "the requestor will use this information for purposes that [SBS] may

not agree with.” However, SBS has not directed our attention to any law, nor are we aware of any law, that excepts the information from disclosure, nor has the company submitted any arguments explaining why the information should not be released. *See* Gov’t Code 552.305(d)(2)(B); *see, e.g., id.* § 552.110; ORDs 661 at 5-6, 552 at 5, 542 at 3. Therefore, we have no basis to conclude any information is excepted from disclosure. As no other arguments against release of the information at issue have been submitted, the submitted information must be released to the requestor.

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 447637

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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