



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2012

Mr. Robert Schell
Assistant Director General Counsel
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

OR2012-05053

Dear Mr. Schell:

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# 450201.

The North Texas Tollway Authority (the "authority") received a request for responses to a specified RFP including pricing information. You state release of the requested information may implicate the interests of Volt Workforce Solutions ("Volt") and Express Employment Professionals ("Express"). Accordingly, you notified Volt and Express of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have received comments from Volt. We have considered the submitted arguments and reviewed the submitted information.¹

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this

¹We note portions of Volt's proposal entitled "Sample Background Check" are redacted. The authority represents to this office that the records were redacted by Volt prior to their submission to the authority.

ruling, we have not received comments from Express. Thus, we have no basis to conclude Express has a protected proprietary interest in any of its information. *See id.* § 552.110(a)-(b); 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 the 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 authority may not withhold any of the information at issue on the basis of any proprietary interest Express may have in it.

Section 552.110(b) protects “[c]ommercial 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[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Volt states that release of its business strategies, costs, markups, insurance information, and client information would cause significant competitive harm. We find Volt has established release of its customer information would result in substantial competitive harm. Accordingly, the authority must withhold Volt’s customer information, which we have marked, under section 552.110(b) of the Government Code. Volt has made only general assertions that release of its business strategies, insurance information, and markups would cause substantial competitive harm. Furthermore, the authority indicates Volt was awarded the contract to which the RFP at issue pertains. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Dep’t of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds made expressly public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, the authority may not withhold any of Volt’s remaining information under section 552.110(b) of the Government Code.

In summary, the authority must withhold Volt’s customer information under section 552.110(b) of the Government Code. The remaining information must be released.

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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 450201

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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