



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2013

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

OR2013-05624

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# 483557.

The Texas Department of Transportation (the "department") received a request for a copy of the offer made by Data Transfer Solutions ("DTS") for the STARS II project, including all technical and pricing information submitted, and a copy of the purchase order. You state the department will release some of the information to the requestor. Although you take no position on the remaining requested information, you state it may contain proprietary information subject to exception under the Act. Accordingly, you state and provide documentation showing the department notified DTS of the request for information and of its right to submit arguments to this office as to why the requested 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 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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from DTS explaining why the submitted information should not be released to the requestor. Therefore, we have no basis to conclude DTS has a protected 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 any of the submitted information based upon the interests of DTS.

We also note that some of the information has been blacked out from the copy of the Maintenance Agreement and Attachment A in which you have submitted for review. Section 552.301 of the Government Code requires a governmental body to submit responsive information in a manner that permits this office to review the information. *See Gov't Code* § 552.301(e)(1)(D). A governmental body that submits redacted information can be found in violation of the procedural requirements of section 552.301, resulting in a determination that the information at issue must be released. *See Gov't Code* §§ 552.006, .301, .302. In this case, because you have not claimed an exception to disclosure and because we have not received any arguments from DTS explaining why the requested information should not be released, we determine the department must release the information at issue to the requestor. Therefore, we do not reach the issue of the department's failure to submit the Maintenance Agreement and Attachment A in reviewable form. In concluding that the requested information must be released, however, we emphasize that to the extent the department maintains the information at issue in non-redacted form, the department must release the non-redacted version of the requested documents 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 483557

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Allen Ibaugh
Data Transfer Solutions
3310 Edge View
San Antonio, Texas 78259
(w/o enclosures)