



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 5, 2013

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

OR2013-19321

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# 504743.

The Texas Department of Transportation (the "department") received a request for the traffic count and toll revenue amount for State Highway 130 Segments 5 & 6 for a specified time period. You state the department believes the submitted information is "releasable public information" in accordance with provisions of the department's contract with SH 130 Concession Company, L.L.C. ("SH130"), but you further state, and provide documentation showing, you notified SH130 of the request for information and of its 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 reviewed the submitted information.

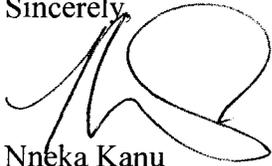
We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, we have not received comments from SH130 explaining why its information should not be released. Therefore, we have no basis to conclude SH130 has a protected proprietary 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 the submitted information on the basis of any proprietary interests SH130 may have in the information. As no exceptions to disclosure have been raised, the department must release the submitted information.

You ask this office to issue a previous determination as to whether State Highway 130 toll revenue and traffic count information must be released. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). Having considered your request, we decline to issue such a previous determination at this time. Accordingly, 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 504743

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Javier Gutierrez  
SH 130 Concession Company  
10800 US Highway 183 North  
Buda, Texas 78610-9460  
(w/o enclosures)