



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2014

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

OR2014-00514

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# 510399.

The Texas Department of Transportation (the "department") received a request for the total number of transactions for specified segments of State Highway 130 between October 2012 and the date of this request and an estimate of the total number of motorists who have used a specified portion of Interstate Highway 35 for comparison.¹ 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

¹You state the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

exception in the Act in certain circumstances). We have reviewed the submitted representative sample of information.²

Initially, we note you have only submitted information related to State Highway 130. We assume, to the extent any information responsive to the remainder of the request existed on the date the department received the request, the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 information at issue. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the department may not withhold the information at issue on the basis of any proprietary interest 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/>

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

[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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 510399

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)