



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2014

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

OR2014-16480

Dear Ms. Parker:

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# 536601.

The Department of Transportation (the "department") received a request for all letters of interest with all accompanying attachments submitted to the department regarding the following solicitation numbers: 31-4RFP5019, 31-4RFP5021, 32-4RFP5087, and 36-4RFP5024. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the information may implicate the interests of numerous third parties. Accordingly, you state, and provide documentation demonstrating, the department notified the third parties of the request for information and of their rights to submit arguments to this office stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from AIA Engineers, Ltd. ("AIA"), Arrendo, Zepeda & Brunz, LLC ("AZ&B"), Barnhart Constructors, Inc. ("Barnhart Constructors"), Binkley & Barfield, Civil Consulting Group, CobbFendley, Dannenbaum Engineering ("Dannenbaum"), IEA, Inc. ("IEA"), and Kellogg Brown and Root Service, Inc. ("KBR"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 letter, we have only received arguments from the third parties listed above. Thus, the remaining third parties have not demonstrated they have protected proprietary interests in any of the submitted 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 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 the remaining third parties may have in the information.

Civil Consulting Group and CobbFendley contend their information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). As the department does not argue section 552.104 is applicable, we will not consider Civil Consulting Group's and CobbFendley's claims under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the department may not withhold any of the submitted information under section 552.104 of the Government Code.

AIA, AZ&B, Barnhart Constructors, Binkley&Barfield, Civil Consulting Group, CobbFendley, Dannenbaum, IEA, and KBR contend their information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person that are privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be the following:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . It may . . . relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates

or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.¹ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

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, substantial competitive injury would likely result from release of the information at issue. *See id.*; *see also* ORD 661 at 5 (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).

AIA, AZ&B, Barnhart Constructor, Binkley & Barfield, Civil Consulting Group, CobbFendley, and IEA argue portions of their information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we conclude each of these third parties have failed to establish a *prima facie* case that any portion of their information meets the definition of a trade secret. We further find these third parties have not demonstrated the necessary factors to establish a trade secret claim for their information. *See* ORD 402.

¹The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Therefore, none of these third parties' information may be withheld under section 552.110(a).

Furthermore, AZ&B, Dannenbaum, and KBR argue their information consists of commercial or financial information, the release of which would cause them substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Dannenbaum has demonstrated portions of its information constitute commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the department must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we find these listed parties have not demonstrated that substantial competitive injury would result from the release of any of the remaining information at issue. *See* ORD 661 at 5. Therefore, we conclude the department may not withhold this information under section 552.110(b). As no further arguments are raised against disclosure of the submitted information, it 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.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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/ac

Ref: ID# 536601

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Aquirre & Fields, L.P.
221 West Exchange Avenue, Suite 210
Fort Worth, Texas 76164
(w/o enclosures)

AIA Engineers, LTD
15310 Park Row
Houston, Texas 77084
(w/o Enclosures)

Brown & Gay Engineers, Inc.
500 West 7th Street, Suite 1800
Fort Worth, Texas 76102
(w/o enclosures)

Costello, Inc.
9990 Richmond Avenue, Suite 450N
Houston, Texas 77042
(w/o enclosures)

CP&Y Inc. DBA Chiang Patel & Yerby
1820 Regal Row, Suite 200
Dallas, Texas 75235
(w/o enclosures)

IEA, Inc.
18333 Preston Road, Suite 205
Dallas, Texas 75252
(w/o enclosures)

Kimley-Horn & Associates
10415 Morado Circle, Building 1, Suite 300
Austin, Texas 78759
(w/o enclosures)

LJA Engineering
2929 Briarpark Drive #600
Houston, Texas 77042
(w/o enclosures)

STANTEC Consulting Services, Inc.
1700 Pacific Avenue, Suite 2340
Dallas, Texas 75201
(w/o enclosures)

URS Corporation
1950 North Stemmons Freeway, Suite
6000
Dallas, Texas 75207
(w/o enclosures)

AECOM Technical Services, Inc.
16000 Dallas Parkway, Suite 350
Dallas, Texas 75248
(w/o enclosures)

AMD Engineering LLC
411 Commerce Street
Childress, Texas 79201
(w/o enclosures)

APM & Associates
2201 Main Street, Suite 1100
Dallas, Texas 75201
(w/o enclosures)

Atkins North America, Inc.
6504 Bridge Point Parkway, Suite 200
Austin, Texas 78730
(w/o enclosures)

Roy R. Brunz
Arredondo, Zepeda & Brunz LLC
11355 McCree Road
Dallas, Texas 75238
(w/o enclosures)

Christopher Barnhart
Barnhart Constructors, Inc.
3710 Watonga Parkway
Houston, Texas 77092
(w/o enclosures)

Antonio Romo, II
Binkley & Barfield
1801 Gateway Boulevard, Suite 101
Richardson, Texas 75080
(w/o enclosures)

Bridgefarmer & Associates
12801 North Central Expressway, Suite 400
Dallas, Texas 75243
(w/o enclosures)

Civil Associates
6800 Manhattan Boulevard, Bldg 4, Ste 400
Fort Worth, Texas 76120
(w/o enclosures)

CH2M Hill, Inc.
12750 Merit Drive, Suite 1100
Dallas, Texas 75251
(w/o enclosures)

Excelsis, Inc.
2825 Wilcrest Drive, Suite 100
Houston, Texas 77042
(w/o enclosures)

HDR Engineering, Inc.
810 Hester's Crossing, Suite 120
Round Rock, Texas 78881
(w/o enclosures)

HNTB Corporation
5910 West Plano Parkway, Suite 200
Plano, Texas 75093
(w/o enclosures)

Huitt-Zollars, Inc.
1717 McKinney Avenue, Suite 1400
Dallas, Texas 75202
(w/o enclosures)

H.W. Lochner, inc.
12001 North Central Expressway, Ste 1050
Dallas, Texas 75243
(w/o enclosures)

Yvonne Newman Engineering
601 Shelley Drive, Suite 203
Tyler, Texas 75701
(w/o enclosures)

K Friese & Associates
City View 2, Suite 100
1120 South Capital of Texas Highway
Austin, Texas 78746
(w/o enclosures)

KYSU Group PLLC
5263 Woodfield Drive
Grand Prairie, Texas 75052
(w/o enclosures)

Lockwood, Andrews & Newman
8350 North Central Expressway, Suite
1400
Dallas, Texas 75206
(w/o enclosures)

Mandy Vassigh Engineering, Inc.
14850 Quorum Drive, Suite 220
Dallas, Texas 75254
(w/o enclosures)

Othon, Inc.
11910 Greenville Avenue, Suite 200
Dallas, Texas 75243
(w/o enclosures)

Parsons Brinckerhoff, Inc.
2777 North Stemmons Freeway, Suite
1600
Dallas, Texas 75207
(w/o enclosures)

S&B Infrastructure, LTD
5408 North 10th Street
McAllen, Texas 78504
(w/o enclosures)

Transystems Corporation Consultants
500 West 7th Street, Suite 1100
Fort Worth, Texas 76102
(w/o enclosures)

Unitech Consulting Engineers, Inc.
2431 East Evans Road
San Antonio, Texas 78259
(w/o enclosures)

VRX, Inc.
2500 North Dallas Parkway #450
Plano, Texas 75093
(w/o enclosures)

White Hawk Engineering And Design LLC
303 South Jupiter Road, Suite 100
Allen, Texas 75002
(w/o enclosures)

Jacobs Engineering Group
1999 Bryan Street, Suite 1200
Dallas, Texas 75201
(w/o enclosures)

Kennedy Consulting LTD
1871 Harroun Avenue, Suite 101
McKinney, Texas 75407
(w/o enclosures)

Teague Nall and Perkins
1100 Macon Street
Fort Worth, Texas 76102
(w/o enclosures)

Civil Consulting Group PLLC
1515 Heritage Drive, Suite 212
McKinney, Texas 75069
(w/o enclosures)

CivilCorp LLC
2825 Wilcrest Drive, Suite 460
Houston, Texas 77042
(w/o enclosures)

Criado & Associates
4141 Blue Lake Circle, Suite 133
Dallas, Texas 75244
(w/o enclosures)

Ejes, inc.
12655 North Central Expressway, Suite
500
Dallas, Texas 75243
(w/o enclosures)

Freese and Nichols, Inc.
4055 International Plaza, Suite 200
Fort Worth, Texas 76109
(w/o enclosures)

Garver
3010 Gaylord Parkway, Suite 190
Frisco, Texas 75034
(w/o enclosures)

Gonzalez De La Garza & Associates
115 East Travis Street, Suite 1120
San Antonio, Texas 75205
(w/o enclosures)

Thomas Holt
Kellogg Brown & Root Services
1807 Ross Avenue, Suite 450
Dallas, Texas 75201
(w/o enclosures)

Lamb-Star Engineering LP
5700 Plano Parkway, Suite 1000
Plano, Texas 75093
(w/o enclosures)

Metropolitan Infrastructure PLLC
9601 White Rock Trail, Suite 204
Dallas, Texas 75238
(w/o enclosures)

Moreno Cardenas Inc
2505 East Missouri Avenue, Suite 100
El Paso, Texas 79903
(w/o enclosures)

Poznecki-Camarillo, Inc.
5835 Callaghan Road, Suite 200
San Antonio, Texas 78228
(w/o enclosures)

Rodriguez Transportation Group
4949 Hedgcoxe, Suite 220
Plano, Texas 75024
(w/o enclosures)

Shield Engineering Group
1200 West Freeway, Suite 300
Fort Worth, Texas 76102
(w/o enclosures)

Solaray Engineering
2727 LBJ Freeway, Suite 525
Dallas, Texas 75234
(w/o enclosures)

Alliance Transportation Group
11500 Metric Boulevard, Suite 150
Austin, Texas 78758
(w/o enclosures)

Cobb, Fendley and Associates
13430 Northwest Freeway, Suite 1100
Houston, Texas 77040
(w/o enclosures)

Entech Civil Engineers
16360 Park Ten Place, Suite 230
Houston, Texas 77084
(w/o enclosures)

Klotz Associates
1160 Dairy Ashford Road, Suite 500
Houston, Texas 77079
(w/o enclosures)

L&G Consulting Engineers
2100 West Expressway 83
Mercedes, Texas 78570
(w/o enclosures)

Michael Baker Jr, Inc.
17721 Rogers Ranch Parkway, Suite 250
San Antonio, Texas 78258
(w/o enclosures)

Pape-Dawson Engineers
555 East Ramsey
San Antonio, Texas 78216
(w/o enclosures)

Ramos Consulting
2303 RR 620, Suite 135-409
Lakeway, Texas 78734
(w/o enclosures)

RG Miller Engineers
12121 Wickchester Lane, Suite 200
Houston, Texas 77079
(w/o enclosures)

RJ Rivera Associates
601 NW Loop 410, Suite 410
San Antonio, Texas 78216
(w/o enclosures)

Rodriguez Transportation Group
17510 Huffmeister Road, Suite 101
McAllen, Texas 78504
(w/o enclosures)

Walter P. Moore and Associates
1301 McKinney, Suite 1100
Houston, Texas 77010
(w/o enclosures)

TEDSI Infrastructure Group
738 Highway 6 South, Suite 430
Houston, Texas 77079
(w/o enclosures)

Arcadis US, Inc.
2929 Briarpark Drive #300
Houston, Texas 77042
(w/o enclosures)

CDM Smith, Inc.
3050 Post Oak Boulevard, Suite 300
Houston, Texas 77056
(w/o enclosures)

DKS Associates
Barton Oaks Plaza One, Suite 300
901 Mopac Expressway South
Austin, Texas 78746
(w/o enclosures)

Epic Transportation Group
5207 Fountainbrook Lane
Sugar Land, Texas 77479
(w/o enclosures)

Gunda Corporation
6161 Savoy, Suite 550
Houston, Texas 77036
(w/o enclosures)

Lee Engineering LLC
3030 LBJ Freeway, Suite 1660
Dallas, Texas 75234
(w/o enclosures)

Neel-Schaffer, Inc.
2180 North Loop West, Suite 305
Houston, Texas 77018
(w/o enclosures)

Reynolds, Smith & Hills
11011 Richmond Avenue, Suite 900
Houston, Texas 77042
(w/o enclosures)

Jennifer Riggs
For Dannenbaum Engineering
Riggs Aleshire & Ray
700 Lavaca Street, Suite 920
Austin, Texas 78701
(w/o enclosures)