



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2014

Ms. Kerri L. Butcher
Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2014-19637

Dear Ms. Butcher:

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# 542113.

The Capital Metropolitan Transportation Authority (the "authority") received a request for copies of the proposals submitted by the winning firms pertaining to statement of qualifications number 126499-0-2013/DXS, including a copy of the score sheets. You state some information was released to the requestor. You also state the release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you notified HDR Engineering, Inc. ("HDR"), and Parsons Brinckerhoff, Inc. ("Parsons") of the request and of their rights to submit arguments to this office explaining 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); *see also* 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 Parsons. We have considered the submitted arguments and 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 HDR explaining why the information at issue should not be released. Therefore, we have no basis to conclude HDR 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 authority may not withhold the submitted information on the basis of any proprietary interests HDR may have in the information.

Parsons argues portions of its information are excepted from disclosure under section 552.110(b) of the Government Code. This section excepts from disclosure “[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). Section 552.110(b) 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.*; see also ORD 661 at 5.

Parsons claims portions of its information constitute commercial and financial information, that if released, would cause the company substantial competitive harm. In advancing its arguments, we understand Parsons to rely, in part, on the test pertaining to the applicability of the section 552(b)(4) exemption under the federal Freedom of Information Act to third-party information held by a federal agency, as announced in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The *National Parks* test provides that commercial or financial information is confidential if disclosure of information is likely to impair a governmental body’s ability to obtain necessary information in the future. *National Parks*, 498 F.2d at 765. Although this office once applied the *National Parks* test under the statutory predecessor to section 552.110, that standard was overturned by the Third Court of Appeals when it held *National Parks* was not a judicial decision within the meaning of former section 552.110. See *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied). Section 552.110(b) now expressly states the standard to be applied and requires a specific factual demonstration that the release of the information in question would cause the business enterprise that submitted the information substantial competitive harm. See ORD 661 at 5-6 (discussing enactment of section 552.110(b) by Seventy-sixth Legislature). The ability of a governmental body to continue to obtain information from private parties is not a relevant consideration under section 552.110(b). *Id.* Therefore, we will consider only Parsons’s interest in withholding the submitted information.

After reviewing the submitted arguments and the information at issue, we find Parsons has demonstrated its customer information in Exhibit G constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, to the extent Parsons’s customer information is not publicly available on Parsons’s website, the authority must withhold the customer information in Exhibit G under section 552.110(b). To the extent Parsons’s customer information is publicly available on the company’s website, the authority may not withhold such information under section 552.110(b). However, we find Parsons has not established any of its remaining information at issue constitutes

commercial or financial information, the disclosure of which would cause the company substantial competitive harm. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, none of Parsons's remaining information at issue may be withheld under section 552.110(b) of the Government Code.

In summary, to the extent Parsons's customer information in Exhibit G is not publicly available on Parsons's website, the authority must withhold the customer information at issue under section 552.110(b) of the Government Code. The authority must release the remaining information.

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 542113

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Kelly J. Kaatz, PE
Senior Vice President
HDR Engineering, Inc.
4401 Westgate Boulevard, Suite 400
Austin, Texas 78745
(w/o enclosures)

Ms. Donya Becton
AVP & Senior Associate Counsel
Parsons Brinckerhoff, Inc.
7650 Corporate Center Drive, Suite 300
Miami, Florida 33126
(w/o enclosures)