



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2014

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

OR2014-22503

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# 546702.

The Texas Department of Transportation (the "department") received a request for all submitted bids for the I-35 expansion project in the department's Waco District. You state the department will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of a number of third parties. Accordingly, you state you have notified the third parties of the request for information and of their 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 received comments from Zachry Construction Corporation ("Zachry"). We have reviewed the submitted arguments and the submitted information.

Initially, we note, and you acknowledge, the department did not comply with its ten-business-day or fifteen-business-day deadlines under sections 552.301(b) and 552.301(e) of the Government Code in requesting a decision from this office regarding the instant request. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested

information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the interests of third parties are at stake, we will consider the arguments against disclosure of 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 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 any of the remaining third parties explaining why the information should not be released. Therefore, we have no basis to conclude the third parties have protected proprietary interests 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 information at issue on the basis of any proprietary interest any of the remaining third parties may have in it.

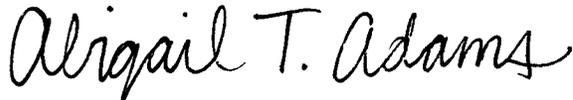
Zachry claims its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person 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. *Id.*; *see also* Open Records Decision No. 661 at 5 (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).

Zachry claims its information is protected under section 552.110(b) of the Government Code. Upon review, we find Zachry has demonstrated its pricing information, which we have marked, constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the department must withhold the information we have marked under section 552.110(b). As no further exceptions to disclosure have been raised, the remaining submitted information 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](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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/ac

Ref: ID# 546702

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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San Antonio, Texas 78205  
(w/o enclosures)

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Houston, Texas 77039  
(w/o enclosures)

Austin Bridge & Road, L.P.  
6330 Commerce Drive, Suite 150  
Irving, Texas 75063  
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Williams Brothers Construction  
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Houston, Texas 77266  
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111 Congress Avenue, Suite 2400  
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930 New Trails Drive, Suite 200  
The Woodlands, Texas 77381  
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Weslaco, Texas 78599  
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The Lane Construction Co.  
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Fort Worth, Texas 76137  
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Sema Construction  
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Austin, Texas 78704  
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James Construction Group  
P.O. Box 90033  
Baton Rouge, Louisiana 70879  
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Texas Sterling Construction  
20810 Fernbush Lane  
Houston, Texas 77073  
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Interstate Highway Construction  
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Englewood, Colorado 80155  
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Knife River Corporation  
P.O. Box 674  
Bryan, Texas 77806  
(w/o enclosures)

Big Creek Construction  
P.O. Box 249  
Hewitt, Texas 76643  
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Archer-Western Contractors  
2121 Avenue J, Suite 103  
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Granite Construction Company  
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