



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2016

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

OR2016-12698

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# 612745.

The Texas Department of Transportation (the "department") received five requests for information and proposals regarding competitive procurement 60144000002784, Information Logo Sign and Tourist-Oriented Directional Sign Program. You claim portions of the submitted information are excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state release of some of the submitted information may implicate the interests of third parties. Accordingly, you provide documentation showing you notified Interstate Logos LLC ("Interstate"); Media Choice and LoneStar Logos ("LoneStar"); and Reagan National Advertising ("Reagan") of the requests for information and of their rights to submit arguments 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 Interstate and Reagan. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note Interstate argues against disclosure of information not submitted by the department to this office. This ruling does not address information beyond what the

department has submitted for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the department has submitted as responsive to the request for information.

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Lonestar explaining why its information should not be released. Therefore, we have no basis to conclude LoneStar 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 interest LoneStar may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You represent the information in Exhibit C consists of scoring and evaluation criteria documents that relate to contracts that have been awarded and executed. However, you state the department "solicits proposals for professional services, including the same types of services at issue here, on a recurring basis." You argue the disclosure of Exhibit C will undercut the department's negotiating position with respect to future procurement for such contracts, and would allow third-party competitors to tailor their letters of interest to specific evaluation criteria, undermining the quality of letters of interest and undermining competition among competitors. After review of the information at issue and consideration of the arguments, we find the department has established the release of Exhibit C would give advantage to a competitor or bidder. Therefore, we conclude the department may withhold Exhibit C under section 552.104(a) of the Government Code.¹

Further, a private third party may invoke this exception. *Id.* Interstate and Reagan state they have competitors. Interstate argues release of portions of its information would cause competitive harm by allowing competitors to know Interstate's pricing data and strategy and competitors could more effectively compete against Interstate. Reagan argues release of a portion of its information would cause substantial competitive harm by "allow[ing] Reagan's

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

competitors to ascertain its business strategies and market status.” After review of the information at issue and consideration of the arguments, we find Interstate and Reagan have established the release of the information at issue would give advantage to a competitor or bidder. Thus, the department may withhold the information we marked under section 552.104(a) of the Government Code.

We note section 552.136(b) of the Government Code provides, “notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”² *Id.* § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the department must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

In summary, the department may withhold Exhibit C under section 552.104(a) of the Government Code. The department may withhold the information we marked under section 552.104(a) of the Government Code. The department must withhold the information we marked under section 552.136 of the Government Code. The remaining 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, 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,



Ian Lancaster
Assistant Attorney General
Open Records Division

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²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

Ref: ID# 612745

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)

3 Third Parties
(w/o enclosures)