



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2016

Ms. Hadassah Schloss
Director
Open Government
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2016-21474

Dear Ms. Schloss:

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# 627696.

The Texas General Land Office (the "GLO") received a request for an awarded contract, top three vendor proposals, and scoring sheets for a specified solicitation. You state you have released 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 Atkins North America, Inc. ("Atkins"); R.W. Patrick & Associates, Inc. ("Patrick"); and Pape-Dawson Engineers, Inc. ("Pape-Dawson"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 arguments from Atkins and Pape-Dawson. We have considered the submitted arguments and information.

Initially, we note Atkins seeks to withhold information not submitted to this office by the GLO. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code

§ 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the GLO, this ruling does not address this information and is limited to the information submitted as responsive by the GLO.

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) of the Government Code 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 Patrick explaining why the submitted information should not be released. Therefore, we have no basis to conclude this party 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 GLO may not withhold any portion of the submitted information related to Patrick on the basis of any proprietary interest it may have in the information.

Atkins asserts portions of its submitted information are protected under section 552.104 of the Government Code. Pape-Dawson asserts the entirety of its submitted information is protected under section 552.104. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, the court concluded a private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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." *Id.* at 841. Atkins and Pape-Dawson state they have competitors. In addition, Atkins and Pape-Dawson state the information at issue, if released, would give competitors an advantage in submitting competitive bids to future requests for proposals. After review of the information at issue and consideration of the arguments, we find Atkins and Pape-Dawson have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the GLO may withhold the portions of Atkins' information we marked and Pape-Dawson's entire information under section 552.104(a) of the Government Code. The GLO 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 627696

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)