



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 28, 2016

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

OR2016-21829

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# 628159.

The Texas Department of Transportation (the "department") received a request for three categories of information related to proposals for a specified time period.<sup>1</sup> You claim some of the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have submitted only information related to the second category of requested information. You have not submitted information responsive to the first and third categories of requested information. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request

---

<sup>1</sup>We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the first and third categories of requested information existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 (Tex. 2015). The department states the submitted information pertains to a competitive bidding situation. The department also states Exhibit B pertains to the consultant selection team used to evaluate bids. The department explains disclosure of Exhibit B would allow third-party competitors to tailor their negotiation strategy depending on the consultant selection team and undermine the contract negotiation process. After review of the information at issue and consideration of the arguments, we find the department has established the release of Exhibit B would give advantage to a competitor or bidder. Thus, the department may withhold Exhibit B under section 552.104(a) of the Government Code.

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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/dls

Ref: ID# 628159

Enc. Submitted documents

c: Requestor  
(w/o enclosures)