



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 27, 2016

Mr. Bradley B. Young  
Counsel for the Guadalupe Blanco River Authority  
Bickerstaff Heath Delgado Acosta, L.L.P.  
3711 South MoPac Expressway, Building One, Suite 300  
Austin, Texas 78746

OR2016-14513

Dear Mr. Young:

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# 615857.

The Guadalupe Blanco River Authority (the "authority"), which you represent, received a request for information pertaining to a specified purchase agreement. You claim some of the submitted information is exempted from disclosure under sections 552.104, 552.103, 552.107, and 552.111 of the Government Code.<sup>1</sup> You also state you notified San Jose Water Company ("SJW") and its subsidiary Texas Water Alliance, Limited ("TWA") 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 SJW which also briefs on behalf of TWA. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code and rule 503 of the Texas Rules of Evidence, this office has concluded section 552.101 does not encompass other exceptions found in the Act or discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Additionally, although you also raise rule 503 of the Texas Rules of Evidence, we note section 552.107 of the Government Code is the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code. *See* ORD 676 at 1-2.

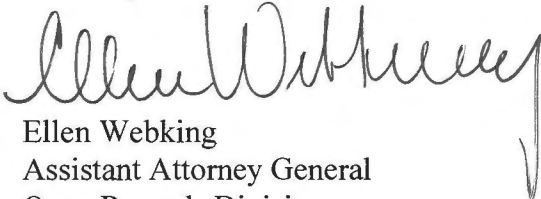
<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the

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 authority states it has specific marketplace interests in the information at issue because the authority competes in the marketplace for reliable sources of water for its central Texas customers. The authority also states release of the submitted information to outside groups who may oppose the deal at issue would “provide such groups with the opportunity to attempt to use the information to undermine [the authority’s] position in the marketplace.” After review of the information at issue and consideration of the arguments, we find the authority has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the submitted information under section 552.104(a) of the Government Code.<sup>3</sup>

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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

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extent those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 615857

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)