



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 13, 2017

Ms. Bridget Hinze  
Public Information Officer  
San Antonio River Authority  
P.O. Box 839980  
San Antonio, Texas 78283-9980

OR2017-03141

Dear Ms. Hinze:

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# 646258.

The San Antonio River Authority (the "authority") received a request for the winning proposal and all evaluation or scoring documents related to a specified request for proposals.<sup>1</sup> Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the DeBerry Group ("DeBerry").<sup>2</sup> Accordingly, you state, and provide documentation showing, you notified DeBerry of the request for information and of its right to submit

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<sup>1</sup>As you have not submitted a copy of the request for information, we take our description from your brief.

<sup>2</sup>Although you cite to section 552.103 of the Government Code in your correspondence to this office, you have not provided any arguments to support this exception. Therefore, we assume you no longer assert this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

arguments to this office as to why the submitted information should not be released.<sup>3</sup> 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 DeBerry. We have reviewed the submitted information and the submitted arguments.

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). 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. DeBerry states it has competitors. In addition, DeBerry states release of the information it has marked would cause harm to DeBerry because such release would negatively affect DeBerry’s ability to compete for business in the future. For many years, this office concluded the terms of a contract, and especially the pricing of a winning bidder, are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find DeBerry 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 information DeBerry marked under section 552.104(a) of the Government Code.<sup>4</sup> The authority must release the remaining information.

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<sup>3</sup>We note the authority did not comply with section 552.301 of the Government Code in requesting a ruling from this office. See Gov't Code § 552.301(e). Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the submitted argument against release of the submitted information. See *id.* §§ 552.007, .302, .352.

<sup>4</sup>As our ruling is dispositive, we need not address DeBerry’s remaining argument against disclosure of the information at issue.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 646258

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)