



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 15, 2017

Ms. Elizabeth Conry Davidson  
Counsel to the Bexar Appraisal District  
Elizabeth Conry Davidson Attorney at Law  
926 Chulie Drive  
San Antonio, Texas 78216

OR2017-03455

Dear Ms. Davidson:

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# 646115.

The Bexar Appraisal District (the "district"), which you represent, received a request for responses to a specified request for proposals. You state you have released some information. You indicate release of the submitted information may implicate the proprietary interests of Tetrattech, Inc.; The Sanborn Map Company, Inc.; Fugro Geospatial, Inc.; Digital Mapping, Inc.; Aerial Services, Inc.; Nearmap US, Inc. ("Nearmap"); Surdex Corporation; and Aeroptic, LLC ("Aeroptic"). Accordingly, you indicate you notified the third parties 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 Nearmap and Aeroptic. You claim the submitted information is excepted from disclosure under sections 552.113, 552.131, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, 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 Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Tetrattech, Inc.; The Sanborn Map Company, Inc.; Fugro Geospatial, Inc.; Digital Mapping, Inc.; Aerial Services, Inc; or Surdex Corporation explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of these third parties have 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 district may not withhold the submitted information on the basis of any proprietary interest these third parties may have in the information.

Aeroptic claims some of its information is excepted from disclosure under section 552.104 of the Government Code. 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). 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. Aeroptic states it has competitors. In addition, Aeroptic states release of the information it indicated would allow competitors to undercut Aeroptic in future bidding situations and to target current Aeroptic customers. After review of the information at issue and consideration of the arguments, we find Aeroptic has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Aeroptic’s information at issue, which we have marked, under section 552.104(a).<sup>1</sup>

Nearmap claims its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also ORD 661 at 5-6.

Upon review, we find Nearmap has established the release of its customer information, which we have marked, would cause it substantial competitive injury. Nevertheless, to the extent Nearmap has published any of the customer information at issue on its website, this information is not confidential under section 552.110. Accordingly, the district must

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<sup>1</sup>As our ruling for this information is dispositive, we need not address remaining arguments against disclosure.

withhold Nearmap's customer information, which we have marked, in the submitted documents under section 552.110(b) of the Government Code, provided Nearmap has not published the information on its website. However, we find Nearmap has failed to demonstrate that release of any of the remaining information at issue, including any customer information published on Nearmap's website, would result in substantial damage to its competitive position. Thus, the third party has not demonstrated that substantial competitive injury would result from the release of any of its remaining information. *See* ORD 661. Accordingly, the district may not withhold any of Nearmap's remaining information, including any customer information published on Nearmap's website, under section 552.110(b) of the Government Code.

Section 552.113 provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure under the Act] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Gov't Code § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded section 552.113(a)(2) protects from public disclosure only (i) geological and geophysical information regarding the exploration or development of natural resources that is (ii) commercially valuable. ORD 627 at 3-4 (overruling rationale of Open Records Decision No. 504 (1988)). The decision explained the phrase "information regarding the exploration or development of natural resources" means "information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation." *Id.* at 4 n.4. However, section 552.113(a)(2) does not except general geological information about a particular location that is unrelated to the "presence or absence of natural resources." In order to be commercially valuable for purposes of Open Records Decision No. 627 and section 552.113, information must not be publicly available. *See* Open Records Decision No. 669 (2000). Upon review, we conclude the district has failed to demonstrate any portion of the remaining information is commercially valuable geological or geophysical information regarding the exploration of or development of natural resources. Accordingly, the district may not withhold any portion of the remaining information under section 552.113(a)(2) of the Government Code.

Section 552.131 of the Government Code relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* § 552.131(a). Section 552.131(a) protects the proprietary interest of third parties that have provided information to governmental bodies, not the interests of the government bodies themselves. This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b); ORDs 661 at 5-6, 552 at 5. As we have already disposed of Nearmap's claims under section 552.110, the district may not withhold any of the remaining information under section 552.131(a) of the Government Code.

Section 552.131(b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See* Gov't Code § 552.131(b). We note the applicability of section 552.131 ends once the governmental body completes an agreement with the business prospect. *Id.* § 552.131(c). You state the remaining documents contain information subject to section 552.131 of the Government Code. Upon review, we find you have failed to demonstrate any portion of the remaining information reveals an incentive being offered by the district. Accordingly, the district may not withhold the remaining information under section 552.131(b) of the Government Code.

The remaining documents also include information that is subject to section 552.136 of the Government Code. Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the district must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the district may withhold Aeroptic’s information at issue, which we have marked, under section 552.104(a) of the Government Code. The district must withhold Nearmap’s customer information, which we have marked, in the submitted documents under section 552.110(b), provided Nearmap has not published the information on its website. The district must withhold insurance policy numbers 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](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,



April Philley  
Assistant Attorney General  
Open Records Division

AP/sb

Ref: ID# 646115

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

8 Third Parties  
(w/o enclosures)