



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 21, 2017

Mr. Todd Chenoweth  
Interim General Counsel  
Texas Water Development Board  
P.O. Box 13231  
Austin, Texas 78711-3231

OR2017-03821

Dear Mr. Chenoweth:

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# 646321.

The Texas Water Development Board (the "board") received a request for certain information pertaining to two specified requests for qualifications issued by the board. You state the board has released some information. 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 GSI Environmental Inc. ("GSI"); INTERA, Inc. ("INTERA"); and Southwest Research Institute ("Southwest"). Accordingly, you state, and provide documentation showing, you notified these 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 comments from GSI and Southwest. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information includes taxpayer identification numbers, which the requestor specifically excluded from her request. Thus, this information is not responsive to the instant request. This ruling does not address the public availability of any information

that is not responsive to the request and the board is not required to release such information in response to this request.

Next, we note some of the responsive information, which we have marked, was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2017-02474 (2017). In that ruling, we determined the board must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the board must continue to rely on Open Records Letter No. 2017-02474 as a previous determination and withhold or release the identical information at issue in accordance with that ruling.<sup>1</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, INTERA has not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the responsive information constitutes proprietary information of INTERA. See 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, 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 board may not withhold the responsive information on the basis of any proprietary interests INTERA may have in it.

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. Southwest states it has competitors. In addition, Southwest states release of the information at issue would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Southwest has established the release of the information at issue would give an advantage to a competitor

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<sup>1</sup>As we are able to make this determination, we need not consider GSI's arguments against disclosure of its information.

or bidder. Thus, we conclude the board may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>2</sup>

In summary, the board must continue to rely on Open Records Letter No. 2017-02474 as a previous determination and withhold or release the identical information at issue, which we have marked, in accordance with that ruling. The board may withhold the information we have marked under section 552.104(a) of the Government Code. The board must release the remaining responsive 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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 646321

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive for this information, we need not consider Southwest's remaining arguments against disclosure.