



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 17, 2017

Ms. Barbara Martinez
Manager of Corporate Records
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2017-08019

Dear Ms. Martinez:

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# 653493 (SAWS File Nos. 5532 and 5778).

The San Antonio Water System (the "system") received a request for several categories of information pertaining to the Vista Ridge Regional Supply Project. The system received a second request from a different requestor for the Vista Ridge Financial Close Financial Model. Although the system takes no position as to whether the submitted information is excepted under the Act, the system states release of the submitted information may implicate the proprietary interests of Abengoa Water USA, LLC ("Abengoa"); Blue Water Vista Ridge, LLC ("BWVR"); Central Texas Regional Water Supply Corporation ("CTRWSC"); Cross County Water Supply Corporation ("CCWSC"); Garney P3, LLC ("Garney"); Garney Holding Company; Metropolitan Water Company ("Met Water"); Pape-Dawson Engineers, Inc.; Sumitomo Mitsui Banking Corporation ("Sumitomo"); Vista Ridge, LLC ("VR"); and VRRSP Consultants, LLC. Accordingly, the system states, and provides documentation showing, it notified the third parties of the request for information and of their rights 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 Abengoa, BWVR, CTRWSC, CCWSC, Garney, Met Water, Sumitomo, and VR. We have reviewed the submitted information and the submitted arguments.

Initially, we note the second requestor only seeks the Vista Ridge Financial Close Financial Model. Accordingly, the remaining information is not responsive to the second request, and the system need not release non-responsive information in response to this request.

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information, and the system may not withhold any portion of it on that basis. *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.

Next, we note some of the requested information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2017-07625 (2017) and 2017-05400 (2017). In Open Records Letter No. 2017-07625, we concluded the system may withhold the information at issue under section 552.104(a) of the Government Code. In Open Records Letter No. 2017-05400, we concluded the system (1) must withhold certain information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code, (2) may withhold certain information under section 552.104(a) of the Government Code, (3) must withhold certain information under section 552.113 of the Government Code, (4) must withhold certain information under section 552.117(a)(1) of the Government Code if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and if a governmental body does not pay for the cellular telephone service, and (5) must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the system must rely on Open Records Letter Nos. 2017-07625 and 2017-05400 as previous determinations and withhold or release the identical information in accordance with those rulings. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the instant request is not identical to the information at issue in Open Records Letter Nos. 2017-07625 and 2017-05400, we will address the submitted arguments against disclosure.

Garney and Met Water argue their information is not responsive to the request for information. However, we note the Act requires a governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the system has submitted Garney's and Met Water's information for our review, we find the system has made a good-faith effort to submit information that is responsive to the request, and we will address the arguments against disclosure of this information.

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. Abengoa, CTRWSC, Garney, Met Water, Sumitomo, and VR state they have competitors. In addition, Abengoa, CTRWSC, Garney, Met Water, Sumitomo, and VR state release of the information they indicated would give advantage to their competitors. After review of the information at issue and consideration of the arguments, we find Abengoa, CTRWSC, Garney, Met Water, Sumitomo, and VR have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information we have indicated under section 552.104(a) of the Government Code.¹

CTRWSC raises section 552.113 of the Government Code for some of the remaining information. 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

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 agree the information we have indicated is commercially valuable geological or geophysical information regarding the exploration of or development of natural resources. Accordingly, the system must withhold the information we have indicated pursuant to section 552.113 of the Government Code.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the Texas Homeland Security Act (the “HSA”). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The system has previously argued, and CTRWSC, Garney, and VR assert, the system’s water and wastewater service systems are critical infrastructure. *See* Open Records Letter No. 2017-05400; *see generally* Gov’t Code § 421.001 (defining “critical infrastructure” to include “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation”). The system has argued release of information that identifies “location and design specifications for infrastructure regarding pumps and pump stations, production wells, pump valves, and projected power usage for water infrastructure to be constructed” as part of the Vista Ridge Regional Water Supply Project “would inform an effort to disrupt technology and other

²As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

operational aspects of [its] water supply” and “reveals vulnerabilities of the critical infrastructure for [its] water supply to an act of terrorism.” Based on these representations and our review, we agree a portion of the information at issue would identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the system must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

We note portions of the remaining information are subject to section 552.136 of the Government Code.³ 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.” Gov’t Code § 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. Open Records Decision No. 684 at 9 (2009). Upon review, we find the system must withhold the bank account and routing numbers we have indicated and all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the system must rely on Open Records Letter Nos. 2017-07625 and 2017-05400 as previous determinations and withhold or release the identical information in accordance with those rulings. The system may withhold the information we have indicated under section 552.104(a) of the Government Code. The system must withhold the information we have indicated pursuant to section 552.113 of the Government Code. The system must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The system must withhold the bank account and routing numbers we have indicated and all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The system must release the remaining information.

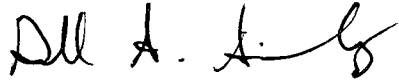
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/som

Ref: ID# 653493

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

11 Third Parties
(w/o enclosures)