



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 26, 2017

Ms. Judith N. Benton  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2017-14129

Dear Ms. Benton:

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# 663334 (Reference No. LGL-17-039).

The City of Waco (the "city") received a request for the proposal submitted by SCS Engineers ("SCS") in response to a specified request for proposals. You state the city has released some information to the requestor. 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 SCS. Accordingly, you state, and provide documentation showing, you notified SCS of the request for information and of its 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 SCS. We have also received comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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. SCS states it has competitors. SCS states release of the information it has indicated would give its competitors an unfair competitive advantage. After review of the information at issue and consideration of the arguments, we find SCS has established the release of the information it has indicated would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information SCS has indicated under section 552.104(a) of the Government Code.<sup>1</sup> The city 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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 663334

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)

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