



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 26, 2017

Ms. Stefanie Albright
Counsel for the Cibolo Creek Municipal Authority
Lloyd Gosselink Rochelle & Townsend PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701

OR2017-14203

Dear Ms. Albright:

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# 663307.

The Cibolo Creek Municipal Authority (the "authority"), which you represent, received four requests for information pertaining to a specified project.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state you notified Hydro Water International ("Hydro"); Evoqua Water Technologies; Kusters Water ("Kusters"); WesTech, Inc. ("WesTech"); and Ovivo USA, L.L.C. ("Ovivo") 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 Hydro, Kusters, WesTech, and Ovivo. 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." Gov't Code § 552.104(a). The

¹You state the authority sought and received clarification of the first and second requests for information. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

“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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You represent the information pertains to a competitive bidding situation. In addition, you state the bidding process is ongoing and the submitted information would reveal competitively sensitive information and hurt the competitive nature of the process. After review of the information at issue and consideration of the arguments, we find authority has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude authority may withhold the submitted information under section 552.104(a) of the Government Code.²

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

Sincerely,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/bw

Ref: ID# 663307

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

5 Third Parties
(w/o enclosures)

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