



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2017

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

OR2017-18283

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# 671134.

The Cibolo Creek Municipal Authority (the "authority"), which you represent, received a request for documents provided to Envirodyne Systems, Inc. ("ESI") in response to previous information requests and information pertaining to bid packages submitted by ESI for a specified project. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the requested information may implicate the proprietary interests of ESI. Accordingly, you state, and provide documentation showing, you notified ESI of the request for information and of its 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 ESI. We have considered the submitted arguments and reviewed the submitted information.

ESI claims portions of the submitted information are 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. ESI states it has competitors. Further, ESI states it competes with other entities, such as the requestor’s company, for similar projects on a regular basis. In addition, ESI states release of the information at issue would give an unfair advantage to its competitors for future projects. After review of the information and consideration of the arguments, we find ESI has established the release of the information at issue, which we marked, would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the information we marked under section 552.104(a) of the Government Code. As no further exceptions to disclosure have been raised, the authority 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 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# 671134

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)