



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2018

Mr. J. Troupe Brewer
Counsel for the North Texas Municipal Water District
Lloyd, Gosselink, Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701

OR2018-02984

Dear Mr. Brewer:

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# 695046.

The North Texas Municipal Water District (the "district"), which you represent, received a request for information pertaining to specified valves involved in a specified project. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you state release of this information may implicate the proprietary interests of a third party. Accordingly, you state you notified RF Valves, Inc. ("RF") 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 RF. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit written comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note RF seeks to withhold information not submitted to this office by the district. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the district, this

ruling does not address this information and is limited to the information submitted as responsive by the district.

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 “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 (Tex. 2015). You represent the submitted information consists of pricing information related to the specified project. You state release of this information would “reveal significant details regarding negotiating points, specifically the pricing criteria that the [d]istrict considers in bidding and negotiating contracts for [future] projects.” You state disclosure of this information would allow bidders to “gain a better understanding of how the [d]istrict makes bidding determinations specific to its budget and use such understanding to undercut . . . the [d]istrict itself during contract negotiations.” After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, the district may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/gw

¹As our ruling is dispositive, we need not address RF’s arguments against disclosure of the information at issue.

Ref: ID# 695046

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)