



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 9, 2019

Mr. Justin S. Light  
Counsel for the Tarrant Regional Water District  
Pope, Hardwicke, Christie, Schell, Kelly & Taplett, L.L.P.  
500 West 7th Street, Suite 600  
Fort Worth, Texas 76102

OR2019-00606

Dear Mr. Light:

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# 744904 (Ref. No. 18.119).

The Tarrant Regional Water District (the "district"), which you represent, received a request for all e-mails sent to or received from two named individuals pertaining to a specified project during a specified period to time and information concerning specified budgetary decisions.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Additionally, you inform us the district notified the United States Army Corps of Engineers (the "corps") 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 § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the corps. We have considered the claimed arguments and reviewed the submitted information.

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<sup>1</sup>We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

*Id.* § 552.022(a)(1). The submitted information contains a completed report subject to section 552.022(a)(1). The district must release the completed report pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.111 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore, the district may not withhold the information subject to section 552.022 under section 552.111 of the Government Code. However, information encompassed by section 552.022 may be withheld under section 552.104. *See* Gov’t Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). Accordingly, we will consider your argument under section 552.104 of the Government Code against disclosure of the completed report subject to section 552.022. Additionally, we will consider the remaining arguments for the information not subject to section 552.022 of the Government Code.

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). We understand you to assert the district has specific marketplace interests in the information at issue because the district competes for limited federal funding for projects. You state the “allocation of funds to each project is highly competitive,” and the district “will be competing for funds on a yearly basis.” You further state the release of the information at issue “would put the [d]istrict at a significant disadvantage” relative to other federally funded projects when attempting to secure project funding. Based on your representations and our review, we find you have demonstrated the district has specific marketplaces interests and release of the information at issue would give

advantage to a competitor or bidder. Accordingly, the district may withhold the submitted information under section 552.104(a) of the Government Code.<sup>2</sup>

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,



Blake Brennan  
Attorney  
Open Records Division

BB/eb

Ref: ID# 744904

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.