



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 12, 2019

Mr. Vic Ramirez  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR2019-06827

Dear Mr. Ramirez:

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# 754256.

The Lower Colorado River Authority (the "LCRA") received two requests from different requestors for information related to request for proposals number 11076. The LCRA claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> Additionally, the LCRA states release of the submitted information may implicate the proprietary interests of Structural Preservation Systems, L.L.C. ("SPS"), and Fibrwrap Construction Services, Inc. ("Fibrwrap"). Accordingly, the LCRA states, and provides documentation showing, it notified SPS and Fibrwrap of the request for information and of the 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

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<sup>1</sup>We note this office asked the LCRA to provide additional information pursuant to section 552.303 of the Government Code. *See Gov't Code* § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the additional information submitted by the LCRA pursuant to our request.

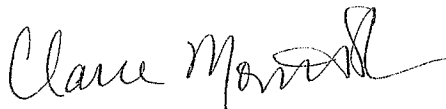
circumstances). We have received comments from SPS and Fibrwrap. We have reviewed the submitted arguments and the submitted information.

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). 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. SPS and Fibrwrap state they have competitors. In addition, SPS and Fibrwrap state release of their information would give their competitors specific knowledge of their products, pricing, and capabilities, which would allow their competitors to underbid them in future competitive bidding processes, causing substantial harm to their competitive interests. After review of the information at issue and consideration of the arguments, we find SPS and Fibrwrap have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the LCRA 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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/eb

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

Ref: ID# 754256

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)

