



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2019

Mr. Robert Martinez
Director
Law Division
Texas Commission on Environmental Quality
P.o. Box 13087
Austin, Texas 78711-3087

OR2019-09246

Dear Mr. Martinez:

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# 758151 (PIR No. 19-45101).

The Texas Commission on Environmental Quality (the "TCEQ") received a request for information pertaining to a proposed project. You state you are making some of the requested information available. You claim some of the submitted information is excepted from disclosure under section 552.137 of the Government Code. You also state release of this information may implicate the proprietary interests of Texas Aquastore ("Aquastore"). Accordingly, you state, and provide documentation showing, you notified Aquastore of the request for information and of its right to submit arguments to this office as to why the information at issue 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 arguments from Aquastore. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Aquastore seeks to withhold information not submitted to this office by the TCEQ. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 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 TCEQ, this ruling does not address this information and is limited to the information submitted as responsive by the TCEQ.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail address you marked is one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the TCEQ may not withhold the e-mail address you marked under section 552.137 of the Government Code.

Aquastore asserts some of the remaining information is protected 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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, 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. Aquastore states it has competitors, which includes the requestor. In addition, Aquastore states the information at issue, if released, would give the requestor an advantage in submitting a competitive bid to similar future request for proposals. After review of the information at issue and consideration of the arguments, we find Aquastore has established the release of the information it indicated would give advantage to a competitor or bidder. Thus, we conclude the TCEQ may withhold the information we indicated under section 552.104(a) of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the TCEQ may withhold the information we indicated under section 552.104(a) of the Government Code. The TCEQ must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 758151

Enc. Submitted documents

c: Requestor
(w/o enclosures)