



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2019

Ms. Monica Trevino-Ortega
Public Information Officer
San Antonio River Authority
100 East Guenther Street
San Antonio, Texas 78204

OR2019-12717

Dear Ms. Trevino-Ortega:

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# 765184.

The San Antonio River Authority (the "authority") received a request for vendor responses and the interview scoring matrix pertaining to a specified request for qualifications.¹ Although the authority takes no position regarding whether the submitted information is excepted from disclosure under the Act, the authority informs us its release may implicate the proprietary interests of Pape-Dawson Engineers, Inc. ("Pape-Dawson") and Vickrey & Associates, Inc. ("Vickrey"). Accordingly, the authority states it notified these third parties of the request for information and of their right to submit arguments to this office. *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 Pape-Dawson and Vickrey. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the authority only submitted vendor proposals in response to the request for information. To the extent any additional information responsive to the request existed on

¹We note the authority did not comply with the requirements of section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

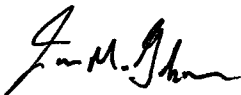
the date the authority received the request, we assume the authority has released it. If the authority has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. Pape-Dawson and Vickrey state they have competitors. In addition, Pape-Dawson and Vickrey explain release of their information would give their competitors an advantage. After review of the information at issue and consideration of the arguments, we find Pape-Dawson and Vickrey have established the release of their information at issue would give an advantage to a competitor or bidder. Accordingly, we conclude the authority may withhold the submitted information under section 552.104(a) of the Government Code.²

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

²As our ruling is dispositive, we need not address Vickrey's remaining arguments against disclosure of its information.

Ref: ID# 765184

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)