



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 24, 2019

Mr. Juan S. Gonzalez
Assistant General Counsel
El Paso Water Utilities
P.O. Box 511
El Paso, Texas 79961-0511

OR2019-14003A

Dear Mr. Gonzalez:

This office issued Open Records Letter No. 2019-14003 (2019) on May 28, 2019. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2019-14003 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 779546.

The El Paso Water Utilities Public Service Board (the "board") received two requests from different requestors for the following information pertaining to Bid No. 14-19: (1) the proposal submitted by the winning bidder; (2) the executed contract; and (3) information pertaining to the bid evaluations. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Blackstone Security Services of Texas, Inc. ("Blackstone"). Accordingly, you state, and provide documentation showing, you notified Blackstone 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 comments from Blackstone. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted for our review information responsive for the executed contract or information pertaining to the bid evaluations. Thus, to the extent any

information responsive to these portions of the requests existed when the present requests were received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note Blackstone asserts exceptions to the required public disclosure of the remaining portion of its proposal. However, the board has not submitted this information for our review. This ruling does not address information beyond what the board has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the board submitted as responsive to the request for information. *See id.*

The board contends the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the board's arguments under section 552.110 of the Government Code.

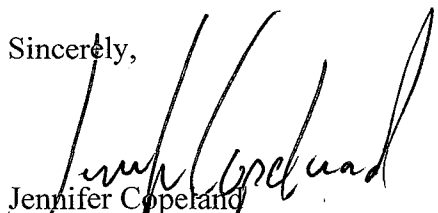
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 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. Blackstone states it has competitors. In addition, Blackstone states release of its information would provide its competitors "with a keen insight into how [Blackstone] conduct[s] business" and place Blackstone at a competitive disadvantage. After review of the information at issue and consideration of the arguments, we find Blackstone has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the board 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.

¹As our ruling on this information is dispositive, we need not address Blackstone's remaining argument against disclosure of this information.

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,



Jennifer Cooperano
Assistant Attorney General
Open Records Division

JC/eb

Ref: ID# 779546

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)