



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 3, 2019

Mr. Mitchell G. Page  
Counsel for the San Jacinto River Authority  
Schwartz, Page & Harding, L.L.P.  
1300 Post Oak Boulevard, Suite 1400  
Houston, Texas 77056

OR2019-18315

Dear Mr. Page:

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# 773624.

The San Jacinto River Authority (the "authority"), which you represent, received a request for information pertaining to agreements for the rendition of legal services between the authority and specified entities during a stated period of time. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the information at issue may implicate the proprietary interests of Bracewell, LLP ("Bracewell") and Hunton Andrews Kurth, LLP ("Hunton"). Accordingly, you state, and provide documentation demonstrating, the authority notified the third parties of the request for information and of their 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 circumstances). We have received comments from Hunton. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received

comments from Bracewell explaining why the information at issue should not be released. Thus, we have no basis to conclude Bracewell has a protected proprietary interest in the information at issue. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Therefore, the authority may not withhold any portion of the submitted information on the basis of any proprietary interest Bracewell may have in it.

Hunton asserts portions of its information at issue are excepted from disclosure under section 552.104(a) 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. Hunton states the information at issue consists of “material elements of the competitive process,” and release of the information at issue “would cause [Hunton] competitive harm.” We note the information Hunton seeks to withhold consists of the terms of agreements for the provision of legal services to the authority. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to the *Boeing* decision, section 552.104 is not limited to only ongoing competitive situations, and it need only be shown release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find Hunton has established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, the authority may withhold the information we marked under section 552.104(a) of the Government Code.<sup>1</sup> As no further

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

exceptions to disclosure have been raised, the authority must release the remaining information.

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/mo

Ref: ID# 773624

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)