



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 1, 2019

Mr. Keith Martin
Corporate Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2019-21334

Dear Mr. Martin:

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# 778504 (SAWS File No. 8058).

The San Antonio Water System (the "system") received a request for communications sent to or from four named individuals pertaining to the Kendall County Water Improvement Control District No. 3.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified Bakke Development Corp. ("BDC") of the request for information and of its 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 BDC. We have considered the submitted arguments and reviewed the submitted information.

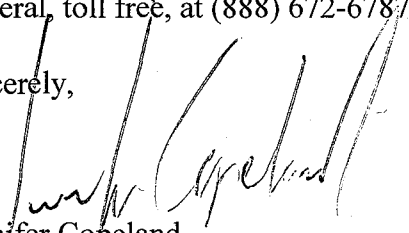
¹The system provides documentation showing it sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The documentation indicates the requestor modified the request in response to the cost estimate. *See id.* § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

Section 552.104(a) of the Government Code exempts 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. BDC states it has competitors. In addition, BDC states release of the information at issue would give its competitors a competitive advantage. After review of the information at issue and consideration of the arguments, we find BDC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude system may withhold the submitted information under section 552.104(a).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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/be

Ref: ID# 778504

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)

²As our ruling is dispositive, we need not consider BDC’s remaining arguments against disclosure.