



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2019

Ms. Paula Stewart
Public Information Coordinator
Tarrant Regional Water District
800 East Northside Drive
Fort Worth, Texas 76102-1016

Mr. Justin S. Light
Counsel for the Tarrant Regional Water District
Pope, Hardwicke, Christie, Schell, Kelly & Taplett, L. L.P.
500 West 7th Street, Suite 600
Fort Worth, Texas 76102

OR2019-27823

Dear Ms. Stewart and Mr. Light:

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# 789461 (TWRD Request 19.083).

The Tarrant Regional Water District (the "district") received a request for contracts pertaining to a specified water conservation marketing campaign. You state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Charlie Uniform Tango and RO Two Media LLC ("RO Two") 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 RO Two. We have considered the submitted arguments and reviewed the submitted information.

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). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You indicate this is a recurring procurement. You state the district “is actively seeking additional services for the current year’s marketing campaign and plans to embark on similar campaigns in future years.” In addition, you also state release of the submitted information would “put the [d]istrict [at] a competitive disadvantage in receiving the most competitive bids [and] give competing consultants advance knowledge of the [d]istrict’s internal information and how much the [d]istrict has offered to pay for similar services[.]” 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 *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a governmental body need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find the district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.¹

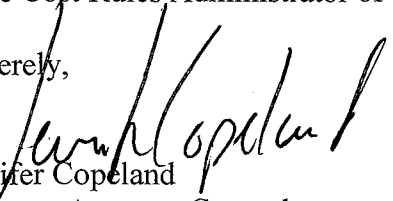
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

¹ As our ruling is dispositive, we need not address RO Two’s argument against disclosure of its information.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 789461.

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)