



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 15, 2019

Mr. Aaron Faris
Open Records Analyst
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2019-32223

Dear Mr. Faris:

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# 797126 (SAWS ORR No. 8532).

The San Antonio Water System (the "system") received a request for four categories of information pertaining to a specified request for proposals. The system states it will release some information to the requestor. Although the system takes no position as to whether the submitted information is excepted under the Act, the system states release of the submitted information may implicate the proprietary interests of numerous third parties. Accordingly, the system states, and provides documentation showing, it notified each third party 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 ConnectTel, Inc. ("ConnectTel"); St. Vincent DePaul Rehabilitation Service of Texas, Inc d/b/a Peak Performers ("Peak"); Trigyn Technologies, Inc. ("Trigyn"); and Tri-Starr Group ("Tri-Starr"). We have reviewed the submitted information and the submitted arguments.¹

¹ We note the submitted information includes the requestor's information. As we assume the requestor does not seek access to the requestor's own information, we do not address the public availability of that 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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information, and the system may not withhold any portion of it on that basis. *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.

Next, we note Peak and Tri-Starr argue against the release of information that was not submitted by the system. This ruling does not address information that was not submitted by the system and is limited to the information the system has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

ConnectTel, Peak, and Trigyn assert their information at issue is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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. ConnectTel, Peak, and Trigyn state they have competitors. In addition, ConnectTel, Peak, and Trigyn state release of their information at issue would provide an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find ConnectTel, Peak, and Trigyn have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold ConnectTel's, Peak's, and Trigyn's information under section 552.104(a) of the Government Code.²

Next, Tri-Starr states its information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

² As our ruling is dispositive, we need not address any remaining arguments against disclosure of this information.

Tri-Starr asserts its information consists of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Tri-Starr has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the system must withhold Tri-Starr's information under section 552.110(b) of the Government Code.³

We note the remaining documents include information that is subject to section 552.136 of the Government Code.⁴ Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Accordingly, the system must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the system may withhold ConnectTel's, Peak's, and Trigyn's information under section 552.104(a) of the Government Code. The system must withhold Tri-Starr's information under section 552.110(b) of the Government Code. The system must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The system must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

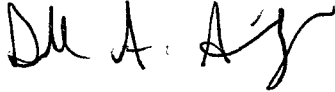
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

³ As our ruling is dispositive, we need not address any remaining arguments against disclosure of this information.

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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,

A handwritten signature in black ink, appearing to read "Gerald Arismendez".

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

Ref: ID# 797126

Enc. Submitted documents

c: Requestor
(w/o enclosures)