



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 6, 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

OR2019-34432

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# 800587.

The San Jacinto River Authority (the "authority"), which you represent, received a request for certain information pertaining to RFQ No. 18-0059, Professional Services for Various Water, Wastewater, and Raw Water Services. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified these interested 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 AECOM; AEI Engineering, LLC ("AEI"); Alliance Geotechnical Group ("AGG"); Aurora Technical Services, LLC ("Aurora"); Baseline Corporation ("Baseline"); Binkley & Barfield, Inc. ("Binkley"); Freese and Nichols, Inc. ("Freese"); Garver, LLC ("Garver"); IDS Engineering Group ("IDS"); KCI; LJA Engineering ("LJA"); Lockwood, Andrews and Newnam, Inc. ("LAN"); and Raba Kistner, Inc. ("Raba Kistner"). We have considered the submitted arguments and reviewed the submitted information.

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 the remaining notified third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining notified third parties have a protected proprietary interest in the submitted information. *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. Accordingly, the authority may not withhold the submitted information on the basis of any proprietary interest the remaining notified third parties may have in the 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). 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. AECOM, AEI, AGG, Aurora, Baseline, Binkley, Freese, Garver, IDS, KCI, LJA, LAN, and Raba Kistner each state they have competitors and release of the information at issue would cause their company harm. After review of the information at issue and consideration of the arguments, we find these third parties have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the AECOM information we marked and the submitted information pertaining to AEI, AGG, Aurora, Baseline, Binkley, Freese, Garver, IDS, KCI, LJA, LAN, and Raba Kistner under section 552.104(a) of the Government Code.<sup>1</sup>

We note some of the remaining information may be subject to copyright law. 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 authority may withhold the AECOM information we marked and the submitted information pertaining to AEI, AGG, Aurora, Baseline, Binkley, Freese, Garver, IDS, KCI, LJA, LAN, and Raba Kistner under section 552.104(a) of the Government Code. The authority must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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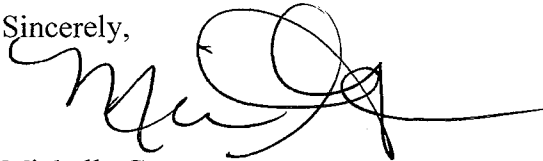
<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 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 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 'Michelle Garza', with a long horizontal flourish extending to the right.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/jxd

Ref: ID# 800587

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

13 Third Parties  
(w/o enclosures)