



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2020

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

OR2020-01972

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# 806806 (ORR 8801).

The San Antonio Water System (the "system") received a request for two specified utility service agreements. 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 Heli Investments LLC ("Heli") and Valcor Commercial Real Estate ("Valcor"). 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 Valcor. We have reviewed the submitted information and the submitted arguments.

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 Heli explaining why the submitted information should not be released. Therefore, we have no basis to conclude Heli 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.

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. Valcor states it has competitors. In addition, Valcor states release of the information at issue would provide an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Valcor has established the release of its information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold Valcor’s information under section 552.104(a) of the Government Code.¹ The system 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 <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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 806806

c: Requestor

Third Party

¹ As our ruling is dispositive, we need not address any remaining arguments against disclosure of this information.