



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 20, 2020

Mr. Daniel L. Rentfro, Jr.  
Counsel for the Brownsville Navigation District of Cameron County  
Rentfro, Irwin, & Irwin, PLLC  
1650 Paredes Line Road, Suite 102  
Brownsville, Texas 78521

OR2020-05369

Dear Mr. Rentfro:

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# 812591.

The Brownsville Navigation District of Cameron County (the "district"), which you represent, received four requests from three different requestors for specified leases.<sup>1</sup> You state you have released some of the requested information pursuant to Open Records Decision No. 2018-12289 (2018). *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). 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 Annova LNG Common Infrastructure ("Annova"); Rio Grande LNG ("Rio Grande"); and Texas LNG Brownsville ("Texas"). Accordingly, you state, and provide documentation

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<sup>1</sup> We note the district sought and received clarification of the information requested by the first requestor. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 arguments from Annova, Rio Grande, and Texas. We have considered the submitted arguments and reviewed the submitted information.

Annova, Rio Grande, and Texas raise section 552.104 of the Government Code for their information. Section 552.104(a) 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. Annova, Rio Grande, and Texas state they have competitors. In addition, Annova, Rio Grande, and Texas state the information at issue pertains to ongoing and future projects and, if released, would give competitors an advantage and cause Annova, Rio Grande, and Texas substantial competitive harm. 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 third party 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 Annova, Rio Grande, and Texas have established the release of Rio Grande’s information and the information we indicated would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information at issue under section 552.104(a) of the Government Code. The district 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,

A handwritten signature in cursive script, appearing to read "Ashley Crutchfield". The signature is written in black ink and is positioned above the typed name.

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/be

Ref: ID# 812591

Enc. Submitted documents

c: 6 Requestors  
(w/o enclosures)