



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2020

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

OR2020-12876

Dear 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# 825399 (TRWD PIR 20.025).

The Tarrant Regional Water District (the "district"), which you represent, received a request for specified e-mail communications involving a named individual. You state the district will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 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*,

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

466 S.W.3d 831 (Tex. 2015). You state the district has specific marketplace interests in the submitted information because “the [d]istrict is competing with other federal projects across the country to obtain funding from the federal government for the [project at issue] on a yearly basis.” In addition, you state release of the submitted information would cause harm to the district because release of the information at issue “would allow [the district’s competitors] to use the information to their advantage in obtaining federal funding[.]” Based upon your representations and our review, we find you have demonstrated the district has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find you have established the release of the submitted information would give advantage to a competitor or bidder. Accordingly, the district may withhold the submitted information under section 552.104(a) of the Government Code.²

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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/be

Ref: ID# 825399

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.