



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 14, 2020

Ms. Dylbia L. Jefferies Vega  
Public Information Officer  
Cameron County  
1100 East Monroe Street  
Brownsville, Texas 78520

OR2020-13666

Dear Ms. Vega:

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# 828277 (PIR# W001310-021720).

Cameron County (the "county") received a request for e-mails of certain county officials with three named entities.<sup>1</sup> The county states it released some information to the requestor. The county claims the submitted information is excepted from disclosure under section 552.131 of the Government Code. Additionally, the county states release of the submitted information may implicate the proprietary interests of the following third parties: Annova LNG ("Annova"); Next Decade Corporation ("Next Decade"); and Texas LNG Brownsville, LLC ("Texas LNG"). Accordingly, the county states, and provides documentation showing, it notified these interested third parties of the request for information and of their right to submit arguments to this office. *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 Next Decade and Texas LNG. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> We note the county sought and received clarification of the information requested. *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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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) of the Government Code 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). Although we received comments from Next Decade, Next Decade does not raise any exceptions to disclosure or assert it has a protected proprietary interest in the information at issue. Furthermore, as of the date of this letter, we have not received comments from Annova explaining why its information should not be released. Therefore, we have no basis to conclude Annova or Next Decade has a protected proprietary interest in the information at issue. *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, 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. Therefore, the county may not withhold the information at issue on the basis of any proprietary interest Annova or Next Decade may have in the information.

Texas LNG raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information 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." Gov't Code § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code 552.104(a). Therefore, we do not address Texas LNG's arguments under section 552.104.

Section 552.110(c) of the Government Code excepts from disclosure "commercial 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[.]" *Id.* § 552.110(c). Texas LNG argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Texas LNG has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the county must withhold the information we marked under section 552.110(c) of the Government Code.<sup>2</sup> However, we find Texas LNG has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

substantial competitive harm. Therefore, the county may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

The county raises section 552.131(a) of the Government Code for the remaining information. Section 552.131(a) relates to economic development information and provides the following:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial 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.

*Id.* § 552.131(a). Section 552.131(a) excepts from disclosure only “trade secret[s] of [a] business prospect” and “commercial 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.” *Id.* § 552.131(a). Section 552.131(a) protects the proprietary interest of third parties that have provided information to governmental bodies, not the interests of the government bodies themselves. Thus, we do not address the county’s arguments under section 552.131(a) for the information at issue.

We note some of the remaining information 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 county must withhold the information we marked under section 552.110(c) of the Government Code. The county must release the remaining information; however, any information subject to copyright may only be released 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.

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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/gw

Ref: ID# 828277

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 3 Third Parties  
(w/o enclosures)