



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2020

Mr. Juan S. Gonzalez
Assistant General Counsel
El Paso Water Utilities Public Service Board
P.O. Box 511
El Paso, Texas 79961-0511

OR2020-21192

Dear Mr. Gonzalez:

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# 841333.

The El Paso Water Utilities Public Service Board (the "board") received a request for information pertaining to a specified incident. 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 Bain Enterprises, LLC d/b/a Bain Construction and Horizon Dewatering, LLC. Accordingly, you state, and provide documentation 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 also received and considered comments from the requestor. *See Gov't Code § 552.304* (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the board has only submitted information related to the requested financial statements. The board has not submitted information responsive to the remaining categories of requested information. We assume, to the extent any information responsive to the remaining categories of requested information existed on the date the

board received the request, the board has released it. If the board has not released any such information, it must do so at this time. *See id.* §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 any third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the board may not withhold the submitted information on the basis of any proprietary interest any third party may have in the information. The board must release the submitted 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/mo

Ref: ID# 841333

Enc. Submitted documents

c: Requestor
(w/o enclosures)