



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2022

Mr. Ashley Harden
General Counsel
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2022-00706

Dear Mr. Harden:

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# 923250.

The Texas Water Development Board (the "board") received a request for information pertaining to a specified request for proposals. You state the board has released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Fugro USA Land, Inc. ("Fugro") and Quantum Spatial. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of the 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 Fugro. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Quantum Spatial. Thus, we have no basis to conclude Quantum Spatial 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 any of the submitted information on the basis of any proprietary interest Quantum Spatial may have in the information.

Section 552.110(c) of the Government Code exempts 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[.]” Gov’t Code § 552.110(c). Fugro argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Fugro has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the board must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the customer information is made available to the public by Fugro, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(c).¹ As no further exceptions to disclosure have been raised, the board 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/be

Ref: ID# 923250

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

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