



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2022

Mr. Scott Oliver
Senior Corporate Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2022-25958

Dear Mr. Oliver:

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# 966241 (SAWS ORR No. R002982-061022).

The San Antonio Water System ("SAWS") received a request for information pertaining to three specified requests for proposals. SAWS states it will release some of the requested information. Although SAWS takes no position as to whether the submitted information is excepted under the Act, SAWS states release of the submitted information may implicate the proprietary interests of numerous third parties. Accordingly, SAWS states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ *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 CP&Y and WGI. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note 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,

¹ SAWS notified: Ardurra Group, Inc. d/b/a LNV, Inc.; Bain Medina Bain, Inc.; BGE, Inc.; CP&Y, Inc. ("CP&Y"); Don Durden, Inc. d/b/a Civil Engineering Consultants; Garcia Infrastructure Consultants, L.L.C.; Garver, L.L.C.; Jones & Carter, Inc.; K Friese & Associates, Inc.; Kimley-Horn & Associates, Inc.; Lockwood, Andrews & Newnam, Inc.; Pape-Dawson Consulting Engineers, Inc.; RPS Infrastructure, Inc.; Unitech Consulting Engineers, Inc.; Weston Solutions, Inc.; and WGI, Inc. ("WGI").

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

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). 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). CP&Y and WGI argue some of the information at issue consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find CP&Y and WGI have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, SAWS must withhold the information we have marked and indicated under section 552.110(c) of the Government Code; however, to the extent CP&Y’s customer information is made available to the public by CP&Y, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110.² However, we find WGI has failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, SAWS may not withhold any of the remaining information at issue under section 552.110 of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Id. § 552.1101(a). WGI asserts disclosure of some of the remaining information at issue would reveal an individual approach to organizational structure, staffing, internal operations, processes, or other pricing information and give advantage to a competitor. Upon review, we find WGI has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and SAWS may not withhold it on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.³ *See id.* § 552.130. Accordingly, SAWS must withhold all visible license plate images within the remaining information under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See Open*

³ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

Records Decision No. 684 at 9 (2009). Accordingly, SAWS must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

In summary, SAWS must withhold the information we have marked and indicated under section 552.110(c) of the Government Code; however, to the extent CP&Y's customer information is made available to the public by CP&Y, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110. SAWS must withhold all visible license plate images within the remaining information under section 552.130 of the Government Code. SAWS must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. SAWS 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jm

Ref: ID# 966241

Enc. Submitted documents

c: Requestor
(w/o enclosures)

16 Third Parties
(w/o enclosures)