



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 30, 2022

Ms. Patricia M. Borschow  
Assistant General Counsel  
El Paso Water Utilities – Public Service Board  
P.O. Box 511  
El Paso, Texas 79961-0511

OR2022-36952

Dear Ms. Borschow:

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# 986283 (EPW09-02).

The El Paso Water Utilities – Public Service Board (the “board”) received a request for specified purchasing records. The board claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception the board claims and reviewed the submitted information.

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.” Gov’t Code § 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*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the board has failed to demonstrate the applicability of section 552.104 of the Government Code to the submitted information, and it may not be withheld on that basis. Accordingly, 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,

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/pt

Ref: ID# 986283

Enc. Submitted documents

c: Requestor  
(w/o enclosures)