



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 18, 2015

Mr. L. Brian Narvaez  
Counsel for the Eagle Pass Water Works System  
Langley & Banack, Inc.  
P.O. Box 218  
Carrizo Spring, Texas 78834

OR2015-09603

Dear Mr. Narvaez:

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# 564038.

The Eagle Pass Water Works System (the "system"), which you represent, received a request for (1) all documents, plans, or maps provided to the system by the Dos Republicas Coal Partnership ("DRCP"), North American Coal Co. ("NAC"), Camino Real Fuels ("CRF"), or any representative of the aforementioned parties, related to any proposed or requested agreement for delivery of water or connection to the system from January 1, 2013 to the date of the request; (2) all documents, plans, or maps related to any proposed extension of the system's service area or the area covered by the system's certificate of public convenience and necessity to include DRCP property from January 1, 2013 to the date of the request; (3) all correspondence between the system and DRCP, NAC, CRF, or any representative of the aforementioned parties, related to categories one and/or two from January 1, 2013 to the date of the request; and (4) copies of all contracts between the system and a named individual for employment or consulting services. You state the system will release some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You further state release of this information may implicate the proprietary interests of Poznecki-Camarillo, Inc. ("PCI").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified PCI of the request for information and of its right to submit arguments to this office as to why the

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<sup>1</sup>We note the system did not comply with the requirements of section 552.301(e) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider whether the information at issue may be withheld on this basis.

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 PCI. We have considered the submitted arguments and reviewed the submitted information.

Although you raise section 552.110 of the Government Code, we note section 552.110 protects the interests of third parties that provide information to governmental bodies, not the interests of the governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Thus, we do not address the system's argument under section 552.110 on behalf of PCI. However, PCI contends some of its plans and specifications are excepted from disclosure under section 552.110(b) of the Government Code, which protects "[c]ommercial 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(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm).

Upon review, we find PCI has demonstrated portions of its information consist of commercial or financial information, the release of which would cause the company substantial competitive harm. Therefore, the system must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find PCI has failed to demonstrate the release of its remaining information would cause the company substantial competitive injury, and has provided no specific factual or evidentiary showing to support such allegations. *See* Open Records Decision No. 661 at 5-6 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the system may not withhold any of PCI's remaining information under section 552.110(b) of the Government Code.

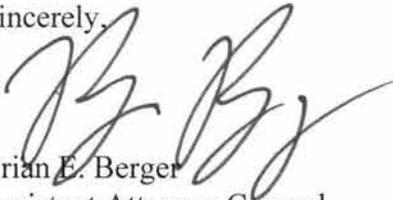
You generally assert the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with copyright law. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, copyright law does not make information confidential under the Act. *See generally* Open Records Decision No. 660 at 5 (1999) (Federal Copyright Act does not make information confidential, but rather gives copyright holder exclusive right to reproduce his work, subject to another person's right to make fair use of it). Furthermore, upon careful review of the remaining information, we find no evidence of copyright protection.

In summary, the system must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining information must be released.

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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 564038

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)