



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2015

Ms. Nancy Belinsky
Vice President and General Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2015-20966

Dear Ms. Belinsky:

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# 582084.

The San Antonio Water System (the "system") received a request for ten categories of information pertaining to a specified project. You state you have released some information. 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 a third party. Accordingly, you state you notified Abengoa Vista Ridge, L.L.C. and Abengoa Water USA, L.L.C. (collectively "Abengoa") of the request for information and of its 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 received comments from a representative for Abengoa. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of previous requests, as a result of which this office issued Open Records Letter No. 2014-18519A (2014). In this ruling we determined the system must: (1) withhold the portions of Abengoa's information we had marked under section 552.110(b) of the Government Code, (2) withhold the insurance policy numbers we marked under section 552.136 of the Government Code, and (3) must release the remaining information. Except with regard to the third party's claims under section 552.104(a), we understand there has not been any change in the law, facts, or circumstances on which Open Records Letter No. 2014-18519A was based. Accordingly, except in regard to the third party's claims under section 552.104(a), we conclude the system must rely on Open Records Letter No. 2014-18519A as a previous determination and withhold or release the identical information in accordance with this

ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Although the law has changed with regard to a third party's right to assert section 552.104(a), *see Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264. at *7 (Tex. June 19, 2015), section 552.007 of the Government Code states if a governmental body voluntarily releases information to any member of the public, a governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007. Section 552.104 does not prohibit the release of information or make information confidential. *See id.* § 552.104. Thus, the system may not now withhold the previously released information.

Next, we note Abengoa argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the system has submitted to us for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the system submitted as responsive to the request for information.

Section 552.110(b) of the Government Code 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).

Abengoa seeks to withhold its pricing model under section 552.110(b) of the Government Code. Abengoa explains the information at issue details the project financial model and processes used by the company in its global business. Upon review, we find Adengoa has made the specific factual or evidentiary showing required by section 552.110(b) that release of the information at issue would cause substantial competitive harm. *See* ORD 661 (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 must withhold the information we have marked under section 552.110(b) of the Government Code.¹

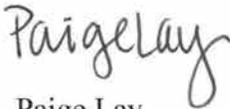
¹As our ruling is dispositive, we need not address the remaining argument against disclosure.

In summary, the system must rely on Open Records Letter No. 2014-18519A as a previous determination and withhold or release the identical information in accordance with this ruling. 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 582084

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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