



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2015

Ms. Cynthia L. Benavides  
Jones, Galligan, Key & Lozano, L.L.P.  
P.O. Drawer 1247  
Weslaco, Texas 78599-1247

OR2015-20981

Dear Ms. Benavides:

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# 582249.

The City of Mission (the "city"), which you represent, received a request for "the plans for Banworth Pool." The city claims the submitted information is excepted under section 552.110 of the Government Code. The city also states the release of the submitted information may implicate the proprietary interests of C.T. Brannon Corporation ("Brannon"). Accordingly, the city states, and provides documentation showing, it notified Brannon of the request for information and of its 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 Brannon. We have considered the submitted arguments and reviewed the submitted information.

The city asserts the submitted information is excepted from disclosure under section 552.110 of the Government Code. However, section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. *See* Gov't Code § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from third party). Therefore, we do not address the city's argument under section 552.110.

We understand Brannon to raise section 552.104 of the Government Code for its information. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at \*7 (Tex.

June 19, 2015). 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.” *Id.* at \*9. Brannon states the requestor’s company is a competitor of Brannon that would profit from release of the submitted information. After review of the information at issue and consideration of Brannon’s arguments, we find Brannon has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a) of the Government Code.

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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 582249

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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