



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 5, 2016

Ms. Paula Stewart  
Public Information Coordinator  
Tarrant Regional Water District  
P.O. Box 4508  
Fort Worth, Texas 76164-0508

OR2016-07631

Dear Ms. Stewart:

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# 604308.

The Tarrant Regional Water District (the "dirtrict") received two requests for proposals, good faith effort documentation, proposed subcontractors and suppliers reports, and goal worksheets submitted by all bidders in response to a specified request for bids. Although the district takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of IPL Partners ("IPL"), S.J. Louis Construction of Texas, Ltd. ("S.J. Louis"), BAR Constructors, Inc., Garney Companies, Inc., and Thalle Midlothian Partners, L.L.C. Accordingly, the district states, and provides documentation showing, it notified the 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. *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 S.J. Louis and the legal representative of IPL. We have considered the submitted arguments and reviewed the submitted information.

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, 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 only received comments from IPL and S.J. Louis explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have a protected proprietary interest

in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 839 (Tex. 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 841. IPL and S.J. Louis state they have competitors. In addition, IPL and S.J. Louis also state release of their information would negatively affect their ability to compete for business in the future. After review of the information at issue and consideration of the arguments, we find IPL and S.J. Louis have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold IPL’s and S.J. Louis’s information at issue under section 552.104(a) of the Government Code.<sup>1</sup> 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,



Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/bw

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 604308

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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