



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Mr. Frank J. Garza  
Counsel for the Brownsville Public Utility Board  
Davidson Troilo Ream & Garza, P.C.  
601 Northwest Loop 410, Suite 100  
San Antonio, Texas 78216-5511

OR2016-10225

Dear Mr. Garza:

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# 608827.

The Brownsville Public Utility Board (the "board"), which you represent, received a request for information pertaining to G&K Services ("GKS"). You state the board will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of GKS. Accordingly, you state, and provide documentation showing, you notified GKS 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 considered the exceptions you claim 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 not received comments from GKS explaining why the submitted information should not be released. Therefore, we have no basis to conclude GKS has 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, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the board may not withhold the submitted information on the basis of any proprietary interest GKS may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” 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 (Tex. 2015). You inform us the information you have marked pertains to a future request for proposals (“RFP”). In addition, you state release of the information at issue would give competitors an unfair advantage in bidding on the future RFP. After review of the information at issue and consideration of the arguments, we find you have established the release of the information you have marked would give advantage to a competitor or bidder. Thus, we conclude the board may withhold the information you have marked under section 552.104(a) of the Government Code.<sup>1</sup> The board must release the remaining 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 [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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bw

---

<sup>1</sup>As our ruling is dispositive, we need not consider your remaining argument against disclosure.

Ref: ID# 608827

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)