



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

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

OR2016-10246

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# 608798.

The San Antonio Water System (the "system") received a request for ten categories of information pertaining to a specified meeting. You indicate some of the requested information does not exist.¹ 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. ("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.

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). A

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (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. Abengoa states it has competitors. In addition, Abengoa states its competitive position will be harmed if its financial statements are released. After review of the information at issue and consideration of the arguments, we find Abengoa has established the release of its financial statements would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information at issue under section 552.104(a) of the Government Code.²

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/som

Ref: ID# 608798

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.