



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2016

Ms. Leena Chaphekar
Assistant General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2016-12253

Dear Ms. Chaphekar:

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# 612142.

The Employees Retirement System of Texas (the "system") received a request for information pertaining to The Energy and Minerals Group ("EMG") for a specified time period. You state the system has released some information. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.143 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of EMG. Accordingly, you state you notified EMG 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 agreements from EMG. We have considered the submitted arguments and reviewed the submitted information, portions of which consist of representative samples.¹

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

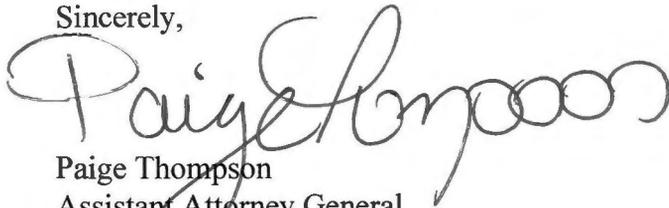
Initially, we note some of the submitted information is not responsive to the instant request because it pertains to information that was created after the date of the request. This ruling does not address the public availability of any information that is not responsive to the request and the system is not required to release such information in response to this request.

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 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. EMG states it has competitors. In addition, EMG states release of the requested information would allow a competitor to shape its portfolio, fees, and rates to be more attractive to the system and other public retirement systems, to the detriment of EMG. After review of the information at issue and consideration of the arguments, we find EMG has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted responsive information 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 Thompson
Assistant Attorney General
Open Records Division

PT/dls

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

Ref: ID# 612142

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)