



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2016

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2016-12687

Dear Mr. Ramirez:

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# 612892.

The Lower Colorado River Authority (the "authority") received a request for information related to a specified request for proposals related to the construction of a specified reservoir, including a list of participating bidders, the sign-in sheet from a specified pre-bid information meeting, all bid addenda issued during the bidding process, methodology for bid evaluation, and all bids submitted in response to the specified request for proposals. You state you will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Granite Construction Company ("Granite") and Phillips & Jordan, Inc. ("P&J"). Accordingly, you state, and provide documentation showing, you notified these parties of the request for information and of their rights 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 P&J. We have reviewed the submitted information and the submitted arguments.

Initially, we note 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 Granite explaining why its information should not be released. Therefore, we have no basis to conclude Granite 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 authority may not withhold the submitted information on the basis of any proprietary interest Granite 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). 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. P&J states it has competitors. In addition, P&J states release of some of its information would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find P&J has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the information we have marked under section 552.104(a).¹ As no further exceptions have been raised for the remaining information, the authority must release it to this requestor.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

¹As our ruling is dispositive for this information, we need not consider the remaining arguments against its disclosure.

Ref: ID# 612892

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)