



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2010

Ms. Peggy Scheffler
Records Management Coordinator
BexarMet Water District
P.O. Box 245994
San Antonio, Texas 78224-5994

OR2010-14643

Dear Ms. Scheffler:

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# 394649.

The Bexar Metropolitan Water District (the "district") received a request for 32 categories of information pertaining to a specified litigation. You state the district does not have any information responsive to categories 3-11, 14-22, 26, or 29-32 of the request.¹ We understand you have made information responsive to categories 23-25 available to the requestor. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code.² Additionally, you claim release of the submitted information may affect the proprietary interests of Water Exploration Co., Ltd. ("Water"). Accordingly, you state, and provide documentation showing, you notified Water of the request for information and of its right to submit arguments to this office as to why its information should not be released to the requestor. *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 exception you claim and reviewed the submitted information.

¹We note that the Act does not require a governmental body that receives a request for information to answer general questions, perform legal research, or create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²Although you raise sections 552.101, 552.110, 552.113, and 552.131 of the Government Code, you present no arguments supporting these exceptions; thus, we assume you have withdrawn them.

Initially, we understand you have asked the requestor for further clarification regarding categories 1, 2, 12, and 13 of the request. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). In correspondence to this office dated September 21, 2010, you inform us the requestor has not yet responded to this request for clarification. Accordingly, we find the district has no obligation at this time to release any information that is responsive to the part of the request for which it has not received clarification. *See* ORD 663 at 5 (1999) (10-business-day deadline tolled while governmental body awaits clarification in good faith). However, if the requestor responds to the clarification request, then the district must seek a ruling from this office before withholding from the requestor any information that would be responsive to the clarification.

Next, we note section 552.022 of the Government Code applies to the submitted information. Section 552.022(a) provides, in part, that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). In this instance, the submitted information consists of contracts, along with their related exhibits and attachments, that are subject to section 552.022(a)(3) of the Government Code. Although you seek to withhold this information under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the district may not withhold any of the submitted contract information under section 552.103 of the Government Code. However, because third party interests can provide a compelling reason to withhold information, we will consider whether any of the information is confidential on that basis.

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 Water explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude Water has protected proprietary interests in its 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. Consequently, the district may not withhold the submitted information on the basis of any proprietary interests Water may have in the information. As no further exceptions to disclosure are raised, the submitted 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 394649

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)