



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2011

Mr. Phil Steven Kosub
Water Resources Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2011-01012

Dear Mr. Kosub:

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# 406290.

The San Antonio Water System (the "system") received a request for the proposal submitted by Grass Valley Water, L.P. ("GVW") in response to the system's request for information regarding the provision and delivery of alternative water supplies, solicitation number P-10-001-DS. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state that release of this information may implicate the proprietary interests of GVW. Accordingly, you notified GVW of the request for information and of the company's 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 received comments from GVW. We have considered the submitted arguments and reviewed the submitted information.

GVW asserts its proposal is excepted from disclosure pursuant to section 552.104 of the Government Code, which excepts "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects the competitive interests of governmental bodies such as the system, not the proprietary interests of private parties such as GVW. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory

predecessor). In this instance, the system does not raise section 552.104 as an exception to disclosure. Therefore, the system may not withhold any of the submitted information under section 552.104 of the Government Code.

GVW also raises section 552.105 of the Government Code, which excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. We note section 552.105 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 564 at 2 (1990) (statutory predecessor to section 552.105 designed to protect governmental body's planning and negotiating position with respect to particular transactions), 357 at 3 (1982), 310 at 2 (1982) (statutory predecessor to section 552.105 protects information relating to the location, appraisals, and purchase price of property to be purchased by governmental body for public purpose); *see also* Open Records Decision No. 522 (1989). As the system does not raise section 552.105, we find this section does not apply to the submitted information. *See* ORD 564 (governmental body may waive statutory predecessor to section 552.105).

Next, GVW contends portions of the submitted information are excepted from disclosure under section 552.110(b) of the Government Code, which protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999). Upon review of GVW's arguments and the information at issue, we find GVW has established a portion of the information at issue, which we have marked, constitutes commercial or financial information, the release of which would cause it substantial competitive harm. However, GVW has failed to demonstrate how any of the remaining information at issue constitutes commercial or financial information the release of which will cause GVW substantial competitive harm. Therefore, the system must only withhold the information we have marked under section 552.110(b) of the Government Code.¹

¹As our ruling is dispositive, we do not address your remaining argument against disclosure for portions of this information.

GVW asserts a portion of its remaining information is excepted from disclosure under section 552.113 of the Government Code, which provides in relevant part as follows:

(a) Information is excepted from the requirements of [required public disclosure] if it is:

...
(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Gov't Code § 552.113(a)(2). In Open Records Decision No. 627, this office concluded section 552.113(a)(2) protects from public disclosure only (i) geological and geophysical information regarding the exploration or development of natural resources that is (ii) commercially valuable. Open Records Decision No. 627 at 3-4 (1994) (overruling rationale of Open Records Decision No. 504 (1988)). The decision explained the phrase "information regarding the exploration or development of natural resources" means "information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation." *Id.* at 4 n.4. However, section 552.113(a)(2) does not except general geological information about a particular location that is unrelated to the "presence or absence of natural resources." In order to be commercially valuable for purposes of Open Records Decision No. 627 and section 552.113, information must not be publicly available. Open Records Decision No. 669 (2000).

Upon review, we conclude GVW has not demonstrated that any of the remaining information at issue is commercially valuable geological or geophysical information regarding the exploration of or development of natural resources. Accordingly, the system may not withhold any of the remaining information at issue under section 552.113.

In summary, the system must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining information must be released to the 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.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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tf

Ref: ID# 406290

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Michael J. Booth
Attorney for Grass Valley Water, LP
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
(w/o enclosures)