



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 10, 2013

Mr. Riley Woods  
Senior Staff Counsel  
Brazos River Authority  
P.O. Box 7555  
Waco, Texas 76714-7555

OR2013-07779

Dear Mr. Woods:

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# 487008.

The Brazos River Authority (the "authority") received a request for "recommendations, analysis, memos or reports" by authority staff regarding a possible land purchase during a specified time period. You claim the requested information is excepted from disclosure under sections 552.104, 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

We first note some of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a

---

<sup>1</sup>We assume that 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.

completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Gov’t Code § 552.022(a)(1). Further, section 552.022(a)(5) of the Government Code provides for the required public disclosure of “all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate,” unless the information is confidential under the Act or other law. *Id.* § 552.022(a)(5). The submitted information contains a completed valuation report and budget information used to estimate the need for or expenditure of public funds that are subject to sections 552.022(a)(1) and 552.022(a)(5). Although you seek to withhold the information subject to section 552.022 under sections 552.105 and 552.111 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body’s interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to Gov’t Code § 552.105 subject to waiver), 470 at 7 (1987) (statutory predecessor to Gov’t Code § 552.111 could be waived). As such, sections 552.105 and 552.111 do not make information confidential for purposes of section 552.022. Therefore, the information subject to section 552.022 may not be withheld under section 552.105 or section 552.111. You also claim the completed report and budget information are excepted from public disclosure under section 552.104 of the Government Code. Information subject to section 552.022(a) may be withheld under section 552.104(a). *See* Gov’t Code § 552.104(b) (information protected by Gov’t Code § 552.104 not subject to required public disclosure under Gov’t Code § 552.022(a)). Therefore, we will consider whether the information subject to section 552.022(a) is excepted under section 552.104. We also will consider your claims for the remaining information at issue.

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). This exception protects a governmental body’s interests in connection with competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has concluded a governmental body may seek protection as a competitor in the marketplace under section 552.104(a) and avail itself of the “competitive advantage” aspect of this exception if the governmental body can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

In response to a request for additional information this office made pursuant to section 552.303 of the Government Code, the authority informs our office that it is in the process of negotiating the purchase of certain real property interests for the purpose of producing groundwater.<sup>2</sup> You assert the authority has a specific marketplace interest in developing and managing water resources in the Brazos River Basin. You contend release of the submitted information would result in specific harm to the authority's marketplace interests. You assert the release of the information at issue would provide a competitive advantage to other parties also negotiating with the landowner to purchase the property at issue. Based on your representations and our review, we find the authority has demonstrated it has a specific marketplace interest and release of the submitted information would result in specific harm to the authority's marketplace interest. Accordingly, we conclude the authority may withhold the submitted information under section 552.104 of the Government Code.<sup>3</sup>

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

---

<sup>2</sup>See Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

<sup>3</sup>As we are able to make this determination, we need not address the other exceptions you claim.

Ref: ID# 487008

Enc. Submitted documents

c: Requestor  
(w/o enclosures)