



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2016

Ms. Paula Stewart  
Public Information Coordinator  
Tarrant Regional Water District  
P.O. Box 4508  
Fort Worth, Texas 76164-0508

OR2016-24512

Dear Ms. Stewart:

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# 632912.

The Tarrant Regional Water District (the "district") received a request for information related to a specified project, including final scoring of proposals, and two specified proposals. The district states it will release some information to the requestor. Although the district takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of BAR Constructors, Inc. ("BAR") and Oscar Renda/Johnson Brothers Joint Venture ("Renda/Johnson"). Accordingly, the district states, and provides documentation demonstrating, it notified the third 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 Renda/Johnson. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information includes financial information of the third parties, which the requestor specifically excluded from his request. Thus, this information is not responsive to the instant request.<sup>1</sup> This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

Next, 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 BAR explaining why its information should not be released. Therefore, we have no basis to conclude BAR has a protected proprietary interest in any portion of 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the district may not withhold BAR's information on the basis of any proprietary interest it 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, 839 (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. Renda/Johnson states it has competitors. In addition, Renda/Johnson also states release of its information would negatively affect its ability to compete for business in the future. After review of the information at issue and consideration of the arguments, we find Renda/Johnson has established the release of its information would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Renda/Johnson's responsive information under section 552.104(a) of the Government Code.<sup>2</sup> The remaining information must be released.

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](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

---

<sup>1</sup>As our ruling is dispositive for this information, we need not consider Renda/Johnson's arguments against its disclosure.

<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Behnke". The signature is stylized with a large initial "J" and a long horizontal stroke.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 632912

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)