

**POPE, HARDWICKE
CHRISTIE, SCHELL, KELLY & TAPLETT, L.L.P.**

ATTORNEYS

Established 1952
500 WEST 7TH STREET, SUITE 600
FORT WORTH, TEXAS 76102
(817) 332-3245
FAX (817) 877-4781

ROBERT E. HARDWICKE
(1889 – 1970)

ALEX POPE, JR.
(1913 – 1988)

ROBERT E. HARDWICKE, JR.
(1917 – 1991)

JUSTIN S. LIGHT
jlight@popohardwicke.com

December 16, 2019

**Via Electronic Submission &
CMRRR #7017 1450 0001 7321 7318**

The Honorable Ken Paxton
The Office of the Attorney General of Texas
Open Records Division
P.O. Box 12548
Austin, TX 78711

Re: Request for Attorney General's Opinion pursuant to Chapter 552, Texas Government Code (the "Texas Public Information Act" or the "Act"); Request for Public Information dated December 3, 2019 by Robert Montoya (the "Request"); TRWD Request 19.133

Dear General Paxton:

We serve as general counsel to the Tarrant Regional Water District, a Water Control and Improvement District (the "District"), which was created, exists and operates pursuant to Article 16, Section 59 of the Texas Constitution. The District hereby requests an Attorney General's opinion under Sections 552.301 & 552.305 of the Texas Public Information Act [Tex. Gov't Code §§ 552.301 & 552.305].

By electronic submission dated December, 2019, a copy of which is included under Tab "1," a written request for information was made under the Texas Public Information Act, Texas Government Code, Chapter 552 (the "Act"). The District certifies it received the Request on December 3, 2019. This request to the Attorney General's Office is therefore timely as it is being submitted within ten (10) business days of the District's receipt of the Request.

The Request seeks documents corresponding "Records corresponding to Request for Proposal (RFP's) for the water conservation marketing campaign between TRWD, City of Dallas, and the North Texas Municipal Water District." Beyond the RFP, which has been released, there are three responsive documents, which are enclosed herewith under Tab "2."

The City of Dallas ("Dallas"), North Texas Municipal Water District ("NTMWD"), and the District (collectively, the "Partners") have jointly worked together for the development and funding of a regional campaign focusing on the efficient use of the regional water supply. Jointly, the Partners supply water to nearly 4.65 million people in the Dallas-Fort Worth Metroplex and surrounding communities. The Water Conservation Public Awareness Campaign made reference in the Request is to build awareness of using water wisely and to provide useful tips on efficient water

use. The Partners work together and share costs in the campaign during peak irrigation season during the summer in an effort to minimize water waste and ultimately save money for water providers and customers. The District has entered into two separate [REDACTED] with R0 Two Media LLC and Charlie Uniform Tango during the 2019 calendar year. Importantly, the marketing campaign is ongoing and the District plans to seek more bids in 2020 calendar year to further the campaign. While the Request does not seek the executed contracts resulting from the RFP, the District has separately received a ruling from the Attorney General's office stating that the District may withhold the executed contracts related to the RFP due to ongoing competitive bidding situations. *See* Tex. Atty Gen. OR2019-27823. The RFP and the related proposals were not sought in the Requestor's July 12, 2019 request.

Below, the District has identified the exception to disclosure that applies, the information to which such exception applies, and the District respectfully request a ruling on the matter.

§ 552.104. Exception: Information Related to Competition or Bidding

The District believes the entirety of the requested information included under Tab "2" is excepted from disclosure by Section 552.104 (Exception: Information Relating to Competition or Bidding) of the Act, which provides, in pertinent part, that "[i]nformation is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder." TEX. GOV'T CODE ANN. § 552.104.

Release of the responsive information will put the District at a disadvantage in obtaining the most competitive bids from consultants [REDACTED]

[REDACTED] for the remainder of the current marketing campaign and upcoming marketing campaigns scheduled being prepared to be put out for bid this calendar year. The marketing campaign subject of the RFP made subject of Request has been a joint effort by the District with other governmental entities since 2009. The District is actively seeking additional services for the remainder of the current marketing campaign and plans to embark on similar campaigns in future years. "The purpose of section 552.104 is to protect the...interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers." Tex. Atty Gen. OR 2009-17592 *citing* Tex. Atty. Gen Op. 592 (1991). Release of the prior bids submitted pursuant to the RFP would put the District in a competitive disadvantage in receiving the most competitive bids going forward as it would disclose [REDACTED]

[REDACTED] put the District at a competitive disadvantage for campaigns set to be bid later in 2020. Releasing the submittals pursuant to the RFP particularly while the campaign is active and still occurring would give competing consultants advance knowledge of the District's internal information and reasoning as to why certain bidders were chosen over others. Competing bidders wanting to compete for similar services as part of this and other District marketing campaigns could easily use the information [REDACTED]

[REDACTED] affect the District's ability to receive the most competitive bids for the remainder

of the current and future campaigns. The competitors could simply match the winning bidders' information in the future creating a cost increase to the District.

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." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015); *see also* Tex. Att'y Gen. Op. OR2016-16453 (2016). The District's funds for the marketing campaign are allocated in each year's budget along with its government partners and the allocation of funds and awarding of contracts are competitive for each media buy or television production contract. [REDACTED]

[REDACTED] Since the process is highly competitive, the District would also be at disadvantage in releasing the preferred media purchases and the competing bids submitted as the District continues its campaigns in effort to make the public aware of water conservation issues. Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987) *see* Op. Tex. Att'y Gen. No. OR2013-18010 (2013). The responsive information also gives insight as to how the District [REDACTED] [REDACTED] that compete for the District's business in the marketing campaign. In total, release of the responsive information would provide a clear threat of harm to the District's ability to obtain the best pricing and contractual provisions in the current and continuing marketing campaigns.

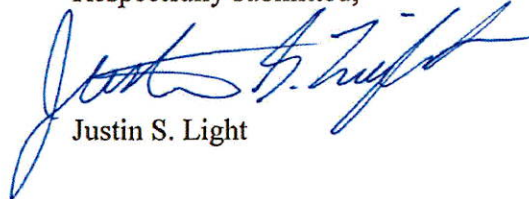
Because the bidders who submitted proposals are also affected by the potential release of the information subject of the Request and this request for Opinion, the District is giving notice to the companies that submitted bids responsive to the RFP made subject of the Request pursuant to §552.305 on December 16, 2019 as well. The District requests an opinion pursuant to both §552.301 & 552.305. A copy of the third party notices are included under Tab "3."

The District hereby certifies that the factual statements made herein are true and correct. For the foregoing reasons, the District respectfully requests that the Attorney General issue his opinion ruling that the information included under Tab "2" at issue herein is excepted from disclosure and that the District may withhold the information. As required by Texas Government Code § 552.301(e)(1)(D), the responsive information is attached hereto at Tab "2." The District believes the listed exception applies to all of the information included at Tab "2."

The District certifies that even date herewith, the District has sent the Requestor a letter notifying him of the District's request for a ruling from the Attorney General and, pursuant to § 552.301(e-1) of the Act, we are providing to the Requestor on this date a redacted copy of this letter, which partially discloses the substance of the information requested, a copy of which (w/o exhibits) is enclosed as Tab "4". Also pursuant to § 552.301(e-1), the copy of this letter being provided to the Requestor does not include the information found at Tab "2," which the District asserts is exempt from disclosure. A copy of the letter notifying Mr. Montoya of the request to the Attorney General's office is also included under Tab "4".

The Honorable Ken Paxton
The Office of the Attorney General of Texas
Open Records Division
December 16, 2019
Page 4

Respectfully submitted,



Justin S. Light

Enclosures

P:\TRWD\Public Info Requests\Montoya, Robert (Water Campaign RFP)\Attorney General (Arguments to AG- 12-16-2019).docx

cc: Tarrant Regional Water District

(Redacted; w/o Tab 2)

✓ Mr. Robert Montoya

P.O. Box 700981

Dallas, Texas 75370

(Via CMRRR #7017 1450 0001 7321 7325 and email rmonoya@empowertexans.com)

1

From: Tarrant Regional Water District <info@trwd.com>
Sent: Tuesday, December 3, 2019 11:07 AM
To: Open Records <openrecords@trwd.com>
Subject: Robert Montoya sent a records request through your website

Name	Robert
------	--------

Last	Montoya
------	---------

Organization	Empower Texans
--------------	----------------

Address	PO Box 700981 Dallas, Texas 75370
---------	--------------------------------------

Phone	2144323076
-------	------------

Email	rmontoya@empowertexans.com
-------	--

Requested Information	For the period of time from 1/1/19 to Present • Records corresponding to Request for Proposal (RFP's) for the water conservation marketing campaign between TRWD, City of Dallas, and the North Texas Municipal Water District.
-----------------------	--

<p>Caution: This email originated from outside TRWD. Do not click links or open attachments unless you recognize the sender and know the content is safe. Please contact the Help Desk if you have any questions.</p>
--