



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 18, 2006

Ms. Sarah Irwin Swanson  
General Law Attorney  
Public Utility Commission of Texas  
P. O. Box 13326  
Austin, Texas 78711

OR2006-12261

Dear Ms. Swanson:

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#262313.

The Public Utility Commission of Texas (the "commission") received a request for "summaries of bill payment assistance programs offered by retail electric providers." In the alternative, the requestor seeks copies of the "responses to Item 6 in the 2005 Annual Report filed by each retail electric provider." You inform us that the commission has no information that is responsive to the first portion of this request.<sup>1</sup> You state that the commission will provide the requestor with most of the responsive information to the alternative request. Although you take no position with respect to the remaining information, you claim that the submitted information may contain proprietary information subject to exception under the Act. You state, and provide documentation showing, that you notified the interested third parties of the commission's receipt of the request for information and of the right of those companies to submit arguments to this office as to why the requested information should not

---

<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

be released to the requestor.<sup>2</sup> 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 reviewed the submitted information.

We note that 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, the interested third parties have not submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of the companies, and the commission may not withhold any portion of the submitted information on that basis. See 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 (1990). Accordingly, the submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

---

<sup>2</sup>The notified third parties are WTU Retail Energy, CPL Retail Energy, Smith & Majcher, Cirro Group, Inc., Direct Energy, and W Power and Light, LP.

Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/krl

Ref: ID# 262313

Enc. Submitted documents

c: Mr. Randall Chapman  
Texas Legal Services Center  
815 Brazos, Suite 1100  
Austin, Texas 78701  
(w/o enclosures)

Mr. Timothy W. Rogers  
CEO, Cirro Group, Inc.  
501 W. President George Bush Highway,  
Suite 350  
Richardson, Texas 75080  
(w/o enclosures)

Mr. Brian Ferguson  
General Counsel  
W Power and Light, LP  
310 Wall Street, Suite 100  
Midland, Texas 79701  
(w/o enclosures)

Ms. Jessica Mahaffey  
Director, Government and  
Regulatory Affairs  
WTU Retail Energy  
221 West 6<sup>th</sup> Street, Suite 2030  
Austin, Texas 78701  
(w/o enclosures)

Ms. Jessica Mahaffey  
Director, Government and  
Regulatory Affairs  
Direct Energy  
221 West 6<sup>th</sup> Street, Suite 2030  
Austin, Texas 78701  
(w/o enclosures)

Ms. Jessica Mahaffey  
Director, Government and  
Regulatory Affairs  
CPL Retail Energy  
221 West 6<sup>th</sup> Street, Suite 2030  
Austin, Texas 78701  
(w/o enclosures)

Ms. Dineen J. Majcher  
Smith & Majcher  
816 Congress Avenue, Suite 1270  
Austin, Texas 78701  
(w/o enclosures)