



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2007

Ms. Noelle C. Letteri  
Legal Services Division  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2007-05048

Dear Ms. Letteri:

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# 277921.

The Texas General Land Office (the "GLO") received a request for its most recent contract with Reliant Energy; "[t]he gross receipts so far for the State Power Program"; and "[t]he documents used to make the statement in the 2006 annual report that the State Power Program earned \$7 million more that year than it would have if under the royalty system." You state that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under section 552.104 of the Government Code. You also believe that this request for information implicates the proprietary interests of Reliant Energy Solutions ("Reliant") under section 552.110 of the Government Code. You notified Reliant of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> We received correspondence from Reliant. We have considered all of the submitted arguments and have reviewed the information you submitted.

We first note that the submitted information consists of a contract between the GLO and Reliant that is subject to section 552.022 of the Government Code. Section 552.022(a)(3)

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<sup>1</sup>See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

provides for the required public disclosure of “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body,” unless the information is expressly confidential under other law. Gov’t Code § 552.022(a)(3). You claim that the submitted information is excepted from disclosure under section 552.104. Section 552.104(b) provides that “[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under [the Act] does not apply to information that is excepted from required disclosure under this section.” *Id.* § 552.104(b). Accordingly, we will consider your arguments under section 552.104. We also will consider Reliant’s arguments under section 552.110, as that exception is other law that makes information confidential for the purposes of section 552.022.

Section 552.104 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 in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that 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).

You assert that the GLO has specific marketplace interests in the submitted information because the GLO is authorized by statute to utilize royalties taken in kind to convey power directly to its public retail customers. *See* Util. Code § 35.102. You inform us that under the authority of section 35.102, the GLO created the State Power Program, through which it competes in the electrical energy marketplace to supply electrical energy to public retail customers. You explain that the GLO “competes with other private companies for the awards of . . . contracts.” Based on these representations, we find that you have demonstrated that the GLO has specific marketplace interests and may be considered a competitor in the marketplace for the purposes of section 552.104. *See* Open Records Decision No. 593 at 3.

You also assert that release of the information at issue would harm the GLO’s marketplace interests. You contend that the submitted information “reveal[s] how the GLO provides its customers [with] electrical energy.” You assert that if its competitors had access to such information, “the GLO would lose its competitive edge in this marketplace,” and

“competitors [would] be able to use the GLO’s methods of delivery of electrical services and its pricing formula for such services as their own.” You argue that “[t]he competitors could use this information to structure their own proposals for future bidding situations[,]” to GLO’s competitive disadvantage in the marketplace. You also assert that the GLO, “working with Reliant[,] is able to offer unique products, services and pricing formulas in the competitive marketplace of electric energy.” You argue that the release of information relating to those products, services and formulas would “significantly impair the GLO’s ability to compete in this marketplace.” Based on your representations, we find that you have demonstrated that release of the submitted information would result in specific harm to the GLO’s marketplace interests in a particular competitive situation. *See* Open Records Decision No. 593 at 3. We therefore conclude that the GLO may withhold the submitted information under section 552.104 of the Government Code.<sup>2</sup>

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 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

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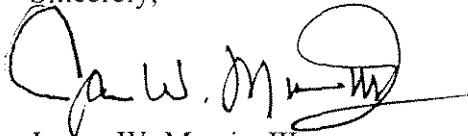
<sup>2</sup>As we are able to make this determination, we need not address Reliant’s arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/jb

Ref: ID# 277921

Enc: Submitted documents

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