



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2009

Mr. James G. Nolan
Assistant General Counsel
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2009-00977

Dear Mr. Nolan:

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# 333048.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for (1) the most recent list of applications under chapter 313 of the Tax Code and (2) all economic impact evaluations prepared by the comptroller. You state you have provided information responsive to the first part of the request. You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. In addition, you note that release of the requested information may implicate the proprietary interests of a third party. Thus, pursuant to section 552.305 of the Government Code, you have notified BP Wind Energy North America, Inc. ("BP") of the request and of its right to submit arguments to this office as to why the information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

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, BP has not submitted comments to this office explaining why its information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes BP's protected proprietary information, and none of it may be withheld on that basis. *See, e.g., 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, 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).

The comptroller asserts that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. You contend that portions of the submitted information are confidential under section 313.028 of the Tax Code, which provides as follows:

Information provided to a school district in connection with an application for a limitation on appraised value under this subchapter that describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application is confidential and not subject to public disclosure unless the governing body of the school district approves the application. Information in the custody of a school district if the governing body approves the application is not confidential under this section.

Tax Code § 313.028. Section 313.025 provides in relevant part:

(b) The governing body of a school district is not required to consider an application for a limitation on appraised value that is filed with the governing body under Subsection (a). If the governing body of the school district does elect to consider an application, the governing body shall deliver three copies of the application to the comptroller and request that the comptroller provide an economic impact evaluation of the application to the school district. . . . The governing body shall provide to the comptroller . . . any requested information.

Id. § 313.025(b). You assert that the submitted information "was compiled from a variety of sources, including the school district, the company seeking the limitation on appraised value, and other sources." Further, you assert the information contains information that was submitted by a school district to the comptroller as prescribed by section 313.025(b) of the Tax Code. You state that the district has not approved the application. Upon review of the submitted documents, we find that the information we have marked describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application. Therefore, to the extent the marked information was "provided to a school district in connection with an application for a limitation on appraised value," the comptroller must withhold it under section 552.101 of the

Government Code in conjunction with section 313.028 of the Tax Code. The remainder of the submitted information is not made confidential by section 313.028 and must be released to the requestor.

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, 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 at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

Ref: ID# 333048

Enc. Submitted documents

cc: Requestor
(w/o enclosures)