



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 19, 2009

Mr. Daniel L. Rentfro, Jr.  
The Rentfro Faulk Law Firm, L.L.P.  
185 East Ruben M. Torres Senior Boulevard  
Brownsville, Texas 78520-9136

OR2009-11662

Dear Mr. Rentfro:

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# 352766.

The Brownsville Navigation District of Cameron County (the "district"), which you represent, received a request for the current lease for wind energy between the district and Cielo Land & Cattle Company, L.P. ("Cielo"), the expired lease for wind energy between the district and Cielo, and reports provided to the Port for Wind Project by Cielo. Although you take no position as to whether the requested information is excepted from disclosure, you state that release of this information may implicate the proprietary interests of Cielo. Accordingly, you state the district notified Cielo of this request for information and of the company's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in Act in certain circumstances). Cielo has responded to the notice and argues that the submitted information is excepted under section 552.110(b) of the Government Code. We have considered the submitted argument and reviewed the submitted information.

Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial

competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 at 5 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue).

Cielo generally asserts that the submitted slide presentation and leases reveal proprietary information about its wind-turbine operations. In particular, Cielo argues release of the royalty rates and development term payments within these documents would allow a competitor to gain an unfair advantage in negotiations with the district. Cielo explains release of its proposed royalty rates and development term payments would allow a competitor to tailor its bid to undercut Cielo’s bid. Based on these representations and our review of the submitted documents, we find Cielo has established release of its royalty rates and development term payments in the submitted proposal would cause it substantial competitive injury. Therefore, the district must withhold this information, which we have marked, under section 552.110(b). However, with respect to the remaining information, Cielo has merely presented descriptions of the information paired with conclusory allegations that the information’s release would cause the company substantial competitive injury. Cielo has not provided any specific factual or evidentiary showing to support such allegations. *See* ORD 661. Additionally, the submitted leases pertain to financial transactions with the district in which Cielo was awarded a contract. This office generally considers the terms of executed government contracts to be a matter of strong public interest. *See generally* Open Records Decision No. 541 at 4 (1990) (Parties doing business with a governmental body are presumed to know the legal restraints that affect the ability of the governmental body to conduct business with complete freedom, including those imposed by the [Public Information] Act.), 514 (1988) (public has interest in knowing prices charged by government contractors). We therefore conclude the district may not withhold any of the remaining information at issue under section 552.110(b).

The remaining information contains bank account and routing numbers. Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). The district must withhold the bank accounting number and routing number we marked under section 552.136.

In summary, the district must withhold the royalty rate and development term payment information we marked under section 552.110(b) and the account and routing numbers we marked under section 552.136. The remaining information must be released.

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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 352766

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

Mr. William Christian  
Graves Dougherty Hearon & Moody  
P.O. Box 98  
Austin, Texas 78767  
(w/o enclosures)