



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

Ms. Jessica Eales
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001

OR2011-06283

Dear Ms. Eales:

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# 416513 (GC No. 18275).

The City of Houston (the "city") received a request for proposals submitted by NRG Energy ("NRG") and RobustEnergy, LLC ("RobustEnergy") for project number PWE-MMB-69000-JR. Although you take no position with respect to the public availability of the submitted information, you state that it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the city notified NRG and RobustEnergy of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *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.

Initially, we note the submitted proposal pertaining to NRG was the subject of a request for information, in response to which this office issued Open Records Letter No. 2011-02860 (2011). As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the city must continue to rely on this ruling as a previous determination and withhold or release NRG's proposal in accordance with this prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on

which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note 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 not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from RobustEnergy. Thus, RobustEnergy has not demonstrated it has a protected proprietary interest in any of the remaining information. *See id.* § 552.110(a)-(b); 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. Accordingly, the city may not withhold any of the remaining information based on the proprietary interests of RobustEnergy.

Next, we note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. As no exceptions to disclosure have been raised, the remaining information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.

In summary, the city must continue to rely upon Open Records Letter No. 2011-02860 as a previous determination and withhold or release NRG's proposal in accordance with that ruling. The city must release the remaining information, but any information that is protected by copyright law may only be released in accordance with copyright law.

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, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/em

Ref: ID# 416513

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)