



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2012

Ms. Sol M. Cortez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-13456

Dear Ms. Cortez:

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# 463383.

The City of El Paso (the "city") received a request for the winning proposal and a second specified proposal submitted in relation to request for proposals 2012-121R. Although you take no position on whether the requested information is excepted from disclosure, you state release of the submitted information may implicate the proprietary interests of TVO Management Services LLC / RJL Real Estate Services ("TVO"). Accordingly, you have notified TVO of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from TVO. We have considered the submitted arguments and reviewed the submitted information.

TVO claims its submitted information is excepted under section 552.104 of the Government Code, which excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). However, this section only protects the interests of a governmental body. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body's interest in competitive bidding situation). Because section 552.104 does not protect the interests of third parties, and the city does not claim this section applies to the submitted information, the city may not withhold any portion of the submitted information under section 552.104 of the Government Code.

TVO raises section 552.110(b) of the Government Code for its financial statements. 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.*; *see also* Open Records Decision No. 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).

TVO argues the submitted information constitutes financial information that is protected under section 552.110(b) of the Government Code. Upon review, we find TVO has made only conclusory allegations that the release of any of its information would result in substantial damage to the company’s competitive position. Thus, TVO has not demonstrated that substantial competitive injury would result from the release of any of its information. *See* Open Records Decision Nos. 661 (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), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, the city may not withhold any of TVO’s information under section 552.110(b) of the Government Code. As no further exceptions are raised, the submitted 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 463383

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Russell Vandenburg
TVO Management Services LLC/RJL Real Estate Services
221 North Kansas, 16th Floor
El Paso, Texas 79901
(w/o enclosures)