ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2013

Ms. Meredith L. Kennedy
Civil Chief
District Attorney's Office
Wichita County
900 Seventh Street
Wichita Falls, Texas 76301-2482

OR2013-00982

Dear Ms. Kennedy:

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# 476753.

Wichita County (the "county") received a request for the county's most recent electricity contract. Although you take no position on the public availability of the requested information, you state the requested information may implicate the proprietary interests of a third party. Accordingly, you inform us, and provide documentation showing, you notified Direct Energy Business, L.L.C. ("Direct Energy") of the request and of the company's right to submit comments to this office as to why the requested information should not be released to the requestor. *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 reviewed the submitted information.

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) 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, we have not received comments from Direct Energy on why the company's submitted information should not be released.

Therefore, we have no basis to conclude Direct Energy has protected proprietary interests in the submitted information. *See 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. Accordingly, the county may not withhold any portion of the submitted information on the basis of any proprietary interest Direct Energy may have in it.

We note some of the submitted information is subject to section 552.136(b) of the Government Code, which states "[n]otwithstanding any other provision of [the Act], 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."[1] Gov't Code § 552.136(b). Therefore, the county must withhold the account numbers we have marked under section 552.136 of the Government Code. 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, 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,

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

---

[1]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 476753

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Direct Energy
Customer Service Manager
1001 Liberty Avenue
Pittsburgh, Pennsylvania 15222
(w/o enclosures)