



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2014

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 108
Austin, Texas 78767-8828

OR2014-10945

Dear Ms. Nicholson:

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# 527288.

The City of Austin (the "city") received a request for copies of contracts with third parties Austin Energy has engaged regarding enrollment of customers into any Customer Assistance Program and into any program paid for by the "Customer Benefit Charge" including the Customer Assistance Program and the Energy Efficiency Program. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Solix, Inc. Accordingly, you state, and provide documentation showing, you notified Solix, Inc. of the request for information and of its 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. We have received and considered comments submitted by the requestor. *See* Gov't Code §552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address the requestor's contention that information believed to be similar or identical to the submitted information has been previously released by another agency. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open

Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. Moreover, section 552.007 pertains to the requirements of a governmental body regarding its own previous release of information, not to the previous release of information by a different governmental body. Accordingly, we find section 552.007 is inapplicable to the submitted information.

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) 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 Solix, Inc. explaining why the submitted information should not be released. Therefore, we have no basis to conclude Solix, Inc. has a protected proprietary interest 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 city may not withhold the submitted information on the basis of any proprietary interest Solix, Inc. may have in the information. As we have no arguments against disclosure of the submitted information, it 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 527288

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Eric Seguin
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(w/o enclosures)