



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2014

Ms. Ana Vieira
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-16777

Dear Ms. Vieira:

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# 537579 (UT OGC # 156905).

The University of Texas Health Science Center at Tyler (the "center") received a request for a copy of its electricity and natural gas contracts, as well as the total billed amounts for electricity and natural gas for 2013. 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 the Texas General Land Office (the "GLO") and Cavallo Energy Texas LLC ("Cavallo"). Accordingly, you state, and provide documentation showing, you notified the GLO and Cavallo 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 § 552.304 (interested party may submit comments stating why information should or should not be released), .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 received comments from the GLO and Cavallo. We have reviewed the submitted information and the submitted arguments.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. This exception protects

a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

The GLO asserts it has specific marketplace interests in the information at issue because the GLO is authorized by statute to sell or otherwise convey power generated from royalties taken in kind. Util. Code § 35.102. The GLO advises under that authority, it has created the State Power Program and the Public Customer Gas Program, through which it bids on contracts for the rights to sell electrical energy and natural gas to public retail customers. The GLO states it competes with other private companies for the awards of these contracts. Based on these representations, we find the GLO has demonstrated it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. *See* ORD 593.

The GLO contends release of its information would harm its marketplace interests because this information details the services and prices the GLO offers its public electrical and natural gas customers. The GLO further asserts, if its competitors had access to this information, they would be able to use the GLO's methods of delivery and pricing formulas for electrical and natural gas services as their own. Thus, the GLO contends that allowing competitors access to the documents at issue will undermine its ability to compete in the electrical and natural gas marketplaces. Based on these representations and arguments, we conclude the GLO has shown release of its information would cause specific harm to the GLO's marketplace interests. *See id.* Therefore, we conclude the center may withhold the submitted information under section 552.104 of the Government Code.¹

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.

¹As our ruling is dispositive, we need not address the GLO's remaining argument, or Cavallo's argument, against disclosure of the information.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 537579

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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