ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2014

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

OR2014-17087

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# 537583 (OCG# 156811).

The University of Texas at Arlington (the "university") received a request for a copy of the university's electricity and natural gas contracts and the total amounts billed to the university for natural gas and electricity during a specified time period. You state you will redact information pursuant to section 552.136(c) of the Government Code.[1] Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interest of third parties. Accordingly, you state, and provide documentation showing, you notified these third parties 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 written comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Cavallo Energy Texas LLC ("Cavallo") and the Texas General Land Office (the

[1]Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

"GLO"). We have considered the submitted arguments and reviewed the submitted information.

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 its information 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, with Cavallo as its representative, through which it bids on contracts for the right to sell electrical energy 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 the release of its information would harm its marketplace interests because this information details the services and the prices the GLO charges for such services in order to provide the university with its electrical needs. The GLO further asserts, if its competitors had access to this information, it would allow "competitors to gain insight into the GLO's business and marketing strategies," and this would "put the GLO at a great disadvantage in the marketplace." Thus, the GLO contends that allowing competitors access to the information at issue will undermine its ability to compete in this marketplace. Based on the GLO's representations and arguments, we conclude the GLO has shown that release of its information would cause specific harm to the GLO's marketplace interests. *See id.* Therefore, we conclude the university may withhold the GLO's information under section 552.104 of the Government Code.[2]

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

[2]As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

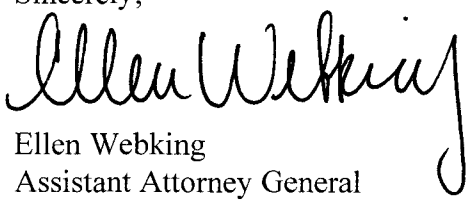
why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, the remaining third party, Cokinos Natural Gas Company, has not submitted to this office any reasons explaining why the remaining requested information at issue should not be released. Therefore, we have no basis to conclude any portion of the remaining information constitutes proprietary information of the third party, and the university may not withhold any portion of the remaining information on that basis. *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.

In summary, the university may withhold the GLO's information under section 552.104 of the Government Code. As no other exceptions to disclosure has been raised, 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.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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 537583

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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