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ATTORNEY GENERAL OF TEXAS

October 20, 2015

Mr. Ronn P. Garcia
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OR2015-22014

Dear Mr. Garcia:

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# 584864.

The Region 18 Education Service Center ("Region 18"), which you represent, received a request for names and locations, copies of current bills, and a copy of the most recent contract related to Region 18's current electrical services contractor. 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 Cavallo Energy Texas, L.L.C. ("Cavallo"), and the General Land Office (the "GLO"). Accordingly, you state, and provide documentation showing, you notified Cavallo and the GLO of the request for information and of the right of each to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code §§ 552.304, .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. We have reviewed the submitted information and the submitted arguments.

Initially, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Cavallo explaining why the submitted information should not be released. Therefore, we have no basis to conclude Cavallo 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, Region 18 may not withhold the submitted information on the basis of any proprietary interest Cavallo may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015).

The GLO informs us it is authorized by statute to sell or otherwise convey power generated from royalties taken in kind. Util. Code § 35.102. The GLO advises us, 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 private companies for the awards of these contracts.” Additionally, the GLO contends the release of its electricity contract with Region 18 would put the GLO at an enormous disadvantage in future bids because this information details services, and the GLO’s business strategies, business methodologies, pricing formulas, and pricing structures. The GLO further asserts release of this information 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 argues 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 the information at issue would give advantage to a competitor or bidder. Therefore, we conclude Region 18 may withhold the electricity contract at issue, which we have marked, under section 552.104 of the Government Code.

The remaining documents also include information that is subject to section 552.136 of the Government Code.¹ Section 552.136 of the Government Code provides, “Notwithstanding 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, Region 18 must withhold the utility account numbers we have marked under section 552.136 of the Government Code.

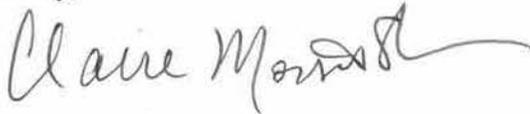
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, Region 18 may withhold the marked electricity contract under section 552.104 of the Government Code. Region 18 must withhold the utility account numbers we marked under section 552.136 of the Government Code. Region 18 must release the remaining information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 584864

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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