



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 25, 2016

Ms. Hilda Salinas  
Public Information Specialist  
County of Hidalgo  
100 East Cano, 1<sup>st</sup> Floor  
Edinburg, Texas 78539

OR2015-26353A

Dear Ms. Salinas:

Our office issued Open Records Letter No. 2015-26353 (2015) on December 15, 2015. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on December 15, 2015. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"))).

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# 602179 (PIR# 2015-466).

The County of Hidalgo (the "county") received a request for the contract between the county and its current electrical services provider. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the interests of Reliant Energy ("Reliant") and the Texas General Land Office (the "GLO"). 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 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. We have considered the submitted arguments and reviewed the submitted 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 Reliant as one of its representatives, 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 the county would put the GLO at a 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 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 the county may withhold the submitted information under section 552.104 of the Government Code.<sup>1</sup>

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](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/akg

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<sup>1</sup>As our ruling is dispositive, we do not address the remaining argument to withhold this information.

Ref: ID# 602179

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Claire Doyle  
Reliant Energy  
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Houston, Texas 77002  
(w/o enclosures)

Ms. Hadassah Schloss  
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