



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 17, 2015

Mr. Cary L. Bovey
Counsel for the City of Llano
Law Offices of Cary L. Bovey, PLLC
2251 Double Creek Dr., Suite 204
Round Rock, Texas 75664

OR2015-26575

Dear Mr. Bovey:

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# 591156.

The City of Llano (the "city"), which you represent, received a request for all Lower Colorado River Authority (the "authority") invoices from a specified time period. The city states it has released some information to the requestor. Although the city takes no position as to whether the submitted information is excepted under the Act, the city informs us it has notified the authority of its right to submit comments to this office as to why its information should not be released. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have received comments from the authority. 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." *Id.* § 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, 841 (Tex. 2015). The authority states it has competitors. In addition, the authority states the release of the submitted information would jeopardize its position in the

competitive electric market and provide an advantage to competitors in that market. For many years, this office concluded the prices charged to a governmental body are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 832. After review of the information at issue and consideration of the arguments, we find the authority has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a).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.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

¹As our ruling is dispositive, we need not address the authority's remaining argument against disclosure.

Ref: ID# 591156

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767
(w/o enclosures)