



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2010

Ms. Barbara Pennington
Information Specialist
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326

OR2010-11137

Dear Ms. Pennington:

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# 388580 (PUC ORR #2010-05-028).

The Public Utility Commission of Texas (the "commission") received a request for documents submitted to the commission that reference a specified application. Although you state the commission takes no position with respect to the public availability of the submitted documents, you state their release may implicate the proprietary interests of REPower, LLC ("REPower"). Accordingly, you state, and provide documentation showing, the commission notified REPower of the request and of the company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(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 the applicability of exception to disclose under Act in certain circumstances). We have received comments from REPower. We have considered the submitted arguments and reviewed the submitted information.

REPower claims portions of the information at issue, including the identity of the entity that has purchased REPower's assets, are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that

substantial competitive injury would likely result from release of the information at issue. See Open Records Decision No. 661 at 5-6 (1999).

REPower claims portions of the submitted information constitute commercial information that, if released, would cause the company substantial competitive harm. After reviewing the submitted arguments and information, we find REPower has made only general conclusory assertions that release of the submitted information, including the identity of a company that has purchased REPower's assets, would cause REPower substantial competitive injury, and has provided no specific factual or evidentiary showing to support such assertions. Therefore, the commission may not withhold any of the submitted information under section 552.110(b) of the Government Code. As no further exception to disclosure has been raised, the submitted 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/sdk

Ref: ID# 388580

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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