



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2010

Mr. Howard S. Slobodin  
Staff Attorney  
Trinity River Authority of Texas  
P.O. Box 60  
Arlington, Texas 76004

OR2010-11663

Dear Mr. Slobodin:

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# 389023.

The Trinity River Authority of Texas (the "authority") received a request for a specified contract. You state you have released most of the requested information to the requestor. You claim a portion of the submitted information is excepted from disclosure under section 552.104. You also state release of the requested information may implicate the proprietary interests of a third party, Direct Energy ("Direct"). Accordingly, you state, and provide documentation showing, you notified Direct of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(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 Direct. We have considered the submitted arguments and reviewed the submitted information.

You claim a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information

in order to obtain more favorable offers. *See* ORD 592. Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except information from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1982) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You state the authority renders wholesale wastewater and potable water services to customer political subdivisions. You inform us the treatment and conveyance of wastewater and potable water demand significant amounts of electricity, which the authority is "active in competitively purchasing" to meet its multi-million dollar electric demand. You acknowledge the authority currently has a contract with Direct to supply electricity to the authority with respect to certain facilities. You state, however, that the authority continuously monitors opportunities in the electric market and solicits pricing from retail electric providers for future years and other authority facilities. You assert that release of the information at issue, which consists of the items included and excluded from the contract price, would be harmful to the authority's interest in a competitive bidding situation because it would compromise the authority's position during future negotiations for electric services. Based on your representations and our review, we find the authority has demonstrated release of the information at issue would harm the authority's interests in a particular ongoing competitive situation. *See* ORD 592. We therefore conclude the authority may withhold the information we have marked under section 552.104.<sup>1</sup>

We note some of the remaining information is subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136(b) states that "[n]otwithstanding 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*

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<sup>1</sup>As our ruling is dispositive of the information at issue, we need not address the remaining argument against disclosure.

<sup>2</sup>The 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).

*id.* § 552.136(a) (defining “access device”). Thus, the authority must withhold the account numbers we marked under section 552.136 of the Government Code.

In summary, the authority may withhold the information we have marked under section 552.104 of the Government Code. The authority must withhold the account numbers we have marked under section 552.136 of the Government Code. 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.oag.state.tx.us/open/index\\_orl.php](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/tp

Ref: ID# 389023

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)