



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 13, 2011

Ms. Marivi Gambini  
Paralegal  
City of Irving  
825 West Irving Boulevard  
Irving, Texas 75060

OR2011-00701

Dear Ms. Gambini:

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# 405953.

The City of Irving (the "city") received two requests for the city's current electricity contract, any broker/consultant agreements that are a part of the procurement process for electricity, and active contracts associated with the procurement of energy for the city's facilities and the Irving Convention Center. You indicate you have no information responsive to requested broker/consultant agreements, and you state you have no responsive information pertaining to the Irving Convention Center.<sup>1</sup> 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 Gexa Energy ("Gexa"). Accordingly, you state, and provide documentation showing, you notified Gexa of the request for information and of its 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) (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 reviewed the submitted information.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Gexa has not

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

submitted to this office any reasons explaining why its requested information should not be released. Thus, we have no basis for concluding any portion of Gexa's information constitutes proprietary information of this company, and the city may not withhold it based on the proprietary interests of Gexa. See 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. As no exceptions to disclosure are 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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 405953

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Rick Watson  
Gexa Energy  
7948 David Boulevard, Suite 100  
North Richland Hills, Texas 76182  
(w/o enclosures)