



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 6, 2011

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2011-04739

Dear Mr. Bilbie:

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# 413670.

The City of Harlingen (the "city") received a request for information related to a specified waste to energy plant letter of intent. You claim the requested information is excepted from disclosure under sections 552.101, 552.104, 552.105, 552.106, 552.110, and 552.131 of the Government Code. You also state release of this information may implicate the proprietary interests of Synergy Renewables, LLC ("Synergy"). Accordingly, you have notified Synergy of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Synergy. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 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). This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the

“competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You explain the city is a competitor in the marketplace with other cities for a solid waste to energy facility. You state the submitted information relates to this project and that the city is currently trying to “clarify the proposal or agreement and compete for [the] project.” You also assert, and have provided documentation showing, the marketplace for this project is highly competitive, and release of the information at issue would allow the other competing cities an unfair advantage over the city. Based on these representations and our review, we find that you have demonstrated that the city has specific marketplace interests. We also find you have demonstrated the existence of a specific threat of actual or potential harm to the city’s interests in a particular competitive situation. We therefore conclude that the city may withhold the submitted information under section 552.104 of the Government Code.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.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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 413670

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Michael P. Childers
Synergy Renewables
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Dallas, Texas 75254
(w/o enclosures)