



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2011

Mr. Jeff T. Ullmann
For the City of Jonestown
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2011-12010

Dear Mr. Ullmann:

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# 427345.

The City of Jonestown (the "city"), which you represent, received a request for information pertaining to a wind turbine project involving the city and CM Energies. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state that, pursuant to section 552.305 of the Government Code, the city notified CM Energies of the request and of the company's right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under in certain circumstances). We have reviewed the submitted information.

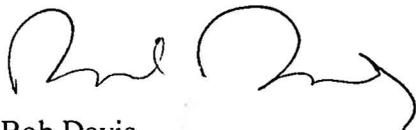
You raise section 552.110 of the Government Code, arguing that "[d]isclosure of the requested information would cause competitive harm to CM Energies." However, because section 552.110 is designed to protect the interests of third parties, not those of governmental bodies, a governmental body may not raise section 552.110 on behalf of a third party. Therefore, if we do not receive comments from a third party explaining why the information at issue should not be released, we will conclude section 552.110 is not applicable. 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from CM Energies explaining why any portion of its information should not be released. Therefore, CM Energies has not demonstrated it has a protected proprietary interest in the submitted information. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, third 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 (1990). Therefore, we conclude the submitted information must be released in its entirety to the requestor.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/agn

Ref: ID# 427345

Enc. Submitted documents

c: Requestor
(w/o enclosures)

CM ENERGIES
ATTN: MR. MIKE GUEVARA
1322 HUNTER ACE WAY
CEDAR PARK, TX 78613
(w/o enclosures)