ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2012

Ms. Elizabeth L. White
For City of Friendswood
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2012-08390

Dear Ms. White:

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# 455236 (City Ref. # W001340-022912).

The City of Friendswood (the "city"), which you represent, received a request for information related to the city's electricity usage for 2011.[1] You claim a portion of the submitted information is excepted from disclosure under section 552.136 of the Government Code. Additionally, you state the submitted documents may contain proprietary information of third parties subject to exception under the Act. Accordingly, the city notified Public Power Pool ("P3") and Reliant Energy Retail Services, LLC ("Reliant") of the request and of their 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 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 in certain circumstances). Further, you also notified the Texas General Land Office (the "GLO") of the request for information and of its right to submit arguments to this office as to why the

[1]You note that the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We note that in responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.[2]

Initially, we note the submitted information may be subject to two previous determinations issued by this office in Open Records Letter Nos. 2012-04176 (2012) and 2012-06365 (2012). In those rulings, we ruled the city may withhold the submitted responsive information under section 552.104 of the Government Code. Thus, with regard to the identical responsive information that was previously requested and ruled on by this office, we conclude the city may rely on the prior rulings as previous determinations and withhold or release the identical information in accordance with those decisions. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by any previous ruling, we will consider your submitted arguments.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from any of the interested third parties. Thus, none of the interested third parties have demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interests any of the interested third parties may have in the information.

Section 552.136(b) of the Government Code 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). Accordingly, the city must withhold the account numbers you have marked pursuant to section 552.136 of the Government Code.

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[2]We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon in Open Records Letter Nos. 2012-04176 and 2012-06365, the city may rely on these prior rulings as previous determinations and withhold or release the identical information in accordance with these rulings. The city must withhold the account numbers you 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, 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,

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 455236

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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