



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2012

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2012-11667

Dear Mr. Moore:

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# 460411 (SO-12-051).

The Texas A&M University System (the "system") received a request for the system's (1) current retail electric provider/supplier contract and (2) any energy procurement consulting vendor contracts. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Fowler Energy Company ("Fowler"). Accordingly, you notified Fowler of the request for information and of the company's 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 Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you have not submitted information responsive to item one of the request. To the extent the system maintains information responsive to this item of the request that existed on the date the request was received, we assume the system has released it. If the system has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body

concludes that no exceptions apply to requested information, it must release information as soon as possible).

We next 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) 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, Fowler has not submitted comments to this office explaining why the submitted information should not be released. Therefore, we have no basis to conclude that Fowler has a protected proprietary interest in this information. See *id.* § 552.110; 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 system may not withhold any portion of the submitted information based upon the proprietary interests of Fowler. As no exceptions to disclosure are raised for this information, the system must release it.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 460411

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Donald Fowler
Fowler Energy Company
4520 Spicewood Spring Road
Austin, Texas 78759
(w/o enclosures)
