



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2012

Mr. Frances R. Broussard
Counsel for Deer Park Independent School District
Thompson & Horton, L.L.P.
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027-7528

OR2012-12129

Dear Mr. Broussard:

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# 460757.

The Deer Park Independent School District (the "district"), which you represent, received a request for "[t]he most currently signed electric utilities contract[.]" Although the district takes no position on the release of the submitted information, you state its release may implicate the proprietary interests of Energy for Schools ("EFS") and the Texas General Land Office (the "GLO"). Accordingly, you notified EFS and the GLO of the request for information and of their rights to submit arguments to this office as to why the 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). EFS responded to the notice and has submitted comments to this office. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *Id.*

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it does not consist of the requested signed utilities contract. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

EFS raises section 552.104 of the Government Code. Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104. 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 that 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 that 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).

EFS explains it is a political subdivision corporation created pursuant to section 304.001 of the Local Government Code. A “political subdivision” is defined as “a county, municipality, school district, hospital district, or any other political subdivision receiving electric service from an entity that has implemented customer choice, as defined in [s]ection 31.002 [of the] Utilities Code.” *See* Local Gov’t Code § 304.001(a). A political subdivision may join with other political subdivisions to form a political subdivision corporation to act as an agent to negotiate the purchase of electricity, make contracts for the purchase of electricity, purchase electricity, and take any other action necessary to purchase electricity on behalf of its incorporating political subdivisions. *See id.* § 304.001(b), (d); *see also* Educ. Code § 44.031(a)(7) (authorizing school districts to form a political subdivision corporation under section 304.001 of the Local Government Code for the purchase of certain goods and services). EFS indicates it competes in Texas’s deregulated wholesale electric market on behalf of its member school districts. EFS states it is authorized to negotiate the purchase of energy for participating school districts. EFS asserts that it has specific marketplace interests in the information at issue because through EFS, member school districts are able to obtain energy at a discount and contain and control energy costs and usage. However, upon review of EFS’s argument, we find EFS has failed to demonstrate how, as a purchaser of electricity, it is a competitor in the marketplace in a particular competitive situation for purposes of section 552.104. *See* ORD 593. Accordingly, as no other arguments against disclosure have been made, the responsive 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 460757

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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