



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2012

Ms. Barbara A. Robillard
Director of Purchasing and Contracts
Spring Branch Independent School District
1031 Witte Road, Building E
Houston, Texas 77055-6016

OR2012-13125

Dear Ms Robillard:

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# 462901.

The Spring Branch Independent School District (the "district") 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 the Texas General Land Office (the "GLO"). Accordingly, you notified the GLO of the request for information and of its 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). The GLO 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.*

The GLO 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).

The GLO asserts it has specific marketplace interests in the information at issue because the GLO is authorized by statute to “sell or otherwise convey power generated from royalties taken in kind.” Util. Code § 35.102. The GLO advises that under that authority, it has created the State Power Program, through which it bids on contracts for the right to sell electrical energy to public retail customers. The GLO states it competes with other private companies for the awards of these contracts. Based on these representations, we find the GLO has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. *See* ORD 593.

The GLO contends the release of the submitted information would harm its marketplace interests because this information details the services and the prices the GLO charges for such services in order to provide the district with its electrical needs. The GLO further asserts that, if its competitors had access to this information, they would “be able to use the GLO’s methods of delivery of electrical services and its pricing formula for such services as their own.” Thus, the GLO contends that allowing competitors access to the documents at issue will undermine its ability to compete in this marketplace. Based on the GLO’s representations and arguments, we conclude the GLO has shown that release of the submitted information would cause specific harm to the GLO’s marketplace interests. *See id.* We therefore conclude the district may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the GLO’s remaining argument against disclosure.

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,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 462901

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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