



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2013

Mr. Frank J. Garza
Counsel for the Brownsville Public Utility Board
Davidson, Troilo, Ream & Garza, P.C.
7550 West Interstate 10, Suite 800
San Antonio, Texas 78229-5815

OR2013-02644

Dear Mr. Garza:

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# 480859.

The Brownsville Public Utility Board (the "board"), which you represent, received a request for information pertaining to a specified request for bids, including a copy of a specified bid proposal and the minutes and agendas from meetings where the board discussed the request for bids. You state the board will release all the requested information except for the specified bid proposal and certain minutes from a meeting of the board. You claim some of the submitted information is excepted from disclosure under section 552.133 of the Government Code. Additionally, you inform us release of the submitted information may implicate the proprietary interests of T&D Solutions, L.L.C. ("T&D"). Accordingly, you notified T&D of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from an attorney for T&D. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted a copy of the minutes you informed us the board has not released. As such, we now assume the board has released these minutes. If the board has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

We understand T&D to assert its pricing information is protected by section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business must show by specific factual evidence that release of particular information at issue would cause substantial competitive injury). Upon review, we find T&D has established its pricing information constitutes commercial or financial information, the release of which would cause substantial competitive injury.¹ Accordingly, the board must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we find T&D has failed to establish that release of any of its remaining information would cause the company substantial competitive injury. *See id.* Therefore, the board may not withhold any of the remaining information under section 552.110(b).

T&D asserts that its remaining information is excepted under section 552.133 of the Government Code, which excepts from disclosure a public power utility's information that is “reasonably related to a competitive matter.” *See* Gov't Code § 552.133(b). Section 552.133 only protects the competitive interest of a public power utility. This exception does not protect the interests of third parties, such as T&D. *See* Open Records Decision No. 666 at 2 (2000) (statutory predecessor to section 552.133 enacted to protect municipally owned utilities from public disclosure of competitive matters). Thus, we find T&D has failed to demonstrate the applicability of section 552.133 to its remaining information and the board may not withhold it on that basis.

In summary, the board must withhold the information we have marked under section 552.110(b) of the Government Code. The board must release the remaining information.

¹As our ruling is dispositive, we need not address the board's argument against disclosure of this information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/som

Ref: ID# 480859

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Bradley L. Drell
Counsel for T&D Solutions, LLC
Gold, Weems, Bruser, Sues & Rundell
P.O. Box 6118
Alexandria, Louisiana 71307-6118
(w/o enclosures)