



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2013

Ms. Linda Rhodes
City Secretary
City of Lake Worth
3805 Adam Grubb
Lake Worth, Texas 76135-3509

OR2013-05627

Dear Ms. Rhodes:

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# 483541.

The City of Lake Worth (the "city") received a request for the city's current electricity contract. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Direct Energy. Accordingly, you have notified this third party of the request and of its right to submit arguments to this office as to why the requested 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 the circumstances). We have considered the exception you claim and reviewed the submitted information.

You state the submitted information includes a confidentiality clause. However, we note information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality

by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the submitted information falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement specifying otherwise.

You raise section 552.110 of the Government Code. We note, however, section 552.110 is designed to protect the interests of third parties, such as Direct Energy, not the interests of a governmental body. Thus, we do not address your arguments under section 552.110 of the Government Code, and the submitted information may be withheld under section 552.110 based only on arguments from Direct Energy. We note 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 letter, we have not received arguments from Direct Energy. Thus, Direct Energy has not demonstrated the company has protected proprietary interests 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 Direct Energy may have in the information. As no other exceptions to disclosure have been raised, the submitted 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 483541

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Direct Energy
c/o Linda Rhodes
City Secretary
City of Lake Worth
3805 Adam Grubb
Lake Worth, Texas 76135-3509
(w/o enclosures)