



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2013

Mr. Robert E. Etlinger
Assistant County Attorney
County of Guadalupe
211 West Court Street
Seguin, Texas 78155-5779

OR2013-19759

Dear Mr. Etlinger:

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# 505496.

The Guadalupe County Auditor (the "county") received a request for the investment grade audit conducted by Noresco, LLC ("Noresco") for RFQ#09-4400, Detailed Energy Audit Services. You state you do not have information responsive to a portion of the request.¹ Although you take no position with respect to the public availability of the requested information, you state release of this information may implicate the proprietary interests of Noresco. Accordingly, you state and provide documentation showing, you have notified Noresco of the request for information 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 (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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

to raise and explain applicability of exception to disclosure under the circumstances). We have reviewed the submitted information.

Initially, we note portions of the submitted information do not pertain to Noresco's audit information. This information is not responsive to the instant request for information. This ruling does not address the public availability of nonresponsive information, and the county is not required to release nonresponsive information in response to this request.

You state the county and Noresco entered into a Memorandum of Understanding, which states Noresco's information is confidential and proprietary. However, 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 predecessor to 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 information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

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 Noresco. Thus, Noresco has not demonstrated it has a protected proprietary interest in any of the responsive 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 county may not withhold the responsive information on the basis of any proprietary interests Noresco may have in the information. As no exceptions against disclosure have been raised, 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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 505496

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Neil Petchers
Noresco, LLC
One Research Drive
Westborough, Massachusetts 01581
(w/o enclosures)