



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2014

Ms. Hadassah Schloss
Open Records Coordinator
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2014-14887

Dear Ms. Schloss:

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# 534177.

The Texas General Land Office (the "GLO") received a request for the date on which each public retail entity's current contract for service will expire. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Reliant Energy Solutions ("Reliant") and Cavallo Energy Texas LLC ("Cavallo"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Cavallo. We have reviewed the submitted arguments and the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 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 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 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 submitted information because the GLO is authorized by statute to “sell or otherwise convey power or natural gas generated from royalties taken in kind[.]” Util. Code § 35.102(a). The GLO advises us, under that authority, it has created the State Power Program, through which it bids on contracts, with, in this instance, Reliant and Cavallo as its representatives, 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 is a key and crucial component of each and every contract. The GLO further asserts, the release of the expiration dates would create a disadvantage to the GLO in the bidding process as it would allow competitors to create tailored marketing strategies in order to target specific public retail customers. Thus, the GLO contends that allowing competitors access to the information 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.* Therefore, we conclude the information may be withheld under section 552.104 of the Government Code.¹

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

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 534177

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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