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September 19, 2014

Mr. Zachariah T. Evans
Counsel for the City of Schulenburg
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OR2014-16649

Dear Mr. Evans:

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# 537976.

The City of Schulenburg (the "city"), which you represent, received a request for the city's current contract with the Lower Colorado River Authority (the "authority") for electrical services. Although we understand the city to take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the authority. Accordingly, you state, and provide documentation showing, you notified the authority of the request for information and of its 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 the authority. We have reviewed the submitted information and the submitted arguments.

Section 552.104 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 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 authority asserts it has specific marketplace interests in the information at issue because the authority is authorized by statute to “develop and generate water power and electric energy within the boundaries of the authority and may distribute and sell water power and electric energy, within or outside the boundaries of the authority.” Spec. Dist. Code § 8503.004. The authority further advises it is an “electric utility” as defined by section 31.002 of the Utilities Code. *See* Util. Code § 31.002(6). The authority states that, pursuant to this legislation, it provides electricity through wholesale electric customers, including the city. The authority states its wholesale electric customers have the option to obtain some of their electricity requirements from sources other than the authority, thus making the authority part of the competitive electric market. Based on these representations, we find the authority has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. *See* ORD 593.

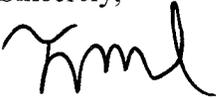
The authority contends the release of the submitted information would harm its marketplace interests because this information can be used to determine the pricing formulas and electric rates the authority charges its wholesale electric customers. The authority further asserts, if its competitors had access to this information, they would be able “to better tailor offers to current and potential [authority] customers,” thus putting the authority at a competitive disadvantage. Based on the authority’s representations and arguments, we conclude the authority has shown that release of the submitted information would cause specific harm to the authority’s marketplace interests. *See id.* Therefore, we conclude the city may withhold the submitted information 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.

¹As our ruling is dispositive, we do not address the authority’s remaining argument against disclosure of the submitted information.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 537976

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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