



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2014

Ms. Ana Vieira
Attorney and Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2014-16986

Dear Ms. Vieira:

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# 537545 (OGC No. 156904).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for a copy of the university's electricity and natural gas contracts and the total amounts billed to the university for natural gas and electricity during a specified time period. You state you will redact information pursuant to section 552.136(c) of the Government Code.¹ Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interest of third parties. 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.² *See* Gov't Code § 552.305 (permitting

¹Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

²The third parties notified pursuant to section 552.305 of the Government Code are Atmos Energy Marketing, L.L.C.; Cavallo Energy Texas, L.L.C.; Cokinios Natural Gas Company; EDF Power Services (TX), L.L.C.; Reliant Energy, Inc.; and the Texas General Land Office.

interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Cavallo Energy Texas, L.L.C. ("Cavallo") and the Texas General Land Office (the "GLO"). We have considered the submitted arguments and reviewed the submitted information.

The GLO raises section 552.104 of the Government Code for the submitted information. 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 GLO asserts it has specific marketplace interests in the information at issue 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. The GLO advises us, under that authority, it has created the State Power Program and the Public Customer Gas Program, through which it bids on contracts for the right to sell to public retail customers electrical energy and natural gas, respectively. 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 its information would harm its marketplace interests because this information details the services and the prices the GLO charges for such services in order to provide the university with its electrical and natural gas needs. The GLO further asserts, if its competitors had access to this information, they would be able to use the GLO's methods of delivery of electrical services and natural gas, and its pricing formula for such services as their own. Thus, the GLO contends that allowing competitors access to the documents 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

information at issue would cause specific harm to the GLO's marketplace interests. *See id.* Therefore, we conclude the university may withhold the submitted information under section 552.104 of the Government Code.³

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/dls

Ref: ID# 537545

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Atmos Marketing, L.L.C.
Attn: Contract Administration
13430 Northwest Freeway, Suite 700
Houston, Texas 77040-6091
(w/o enclosures)

³As our ruling is dispositive, we do not address the remaining arguments against disclosure of this information.

Ms. Teresa Kelly
Vice President
Cavallo Energy Texas, L.L.C.
4545 Post Oak Place, Suite 342
Houston, Texas 77027
(w/o enclosures)

Mr. Kevin Cokinos
Cokinos Natural Gas Company
5718 Westheimer, Suite 900
Houston, Texas 77057
(w/o enclosures)

Ms. Nancy Holly
Mr. Miguel Garcia
EDF Power Services (TX), L.L.C.
4700 West Sam Houston Parkway North
Houston, Texas 77041
(w/o enclosures)

Reliant Energy, Inc.
Attn: Contract Administration
100 Main Street
Houston, Texas 77002
(w/o enclosures)

Ms. Hadassah Schloss
Open Records Coordinator
Legal Services Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873
(w/o enclosures)