



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 20, 2016

Mr. Stuart Reilly  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2016-14003

Dear Mr. Reilly:

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# 615229.

The City of Austin's (the "city") municipally-owned electric utility, Austin Energy, received a request for multiple categories of information relating to coal supply contracts. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.133 of the Government Code. You also state you notified the Lower Colorado River Authority (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 § 552.304 (interested third party may submit comments stating why information should or should not be released). We have received comments from the authority. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the requestor asks the city to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new

---

<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the city has made a good-faith effort to do so.

The authority claims the present request is not a request for information under the Act. It informs us the requested information relates to a due process hearing involving the requestor's client. The authority states discovery in a due process hearing is "limited to those [methods] specified in the Administrative Procedure Act ("APA"), Texas Government Code, Chapter 2001 . . . [and] discovery between parties engaged in a contested case such as the one at issue here is conducted under the Texas Rules of Civil Procedure." The authority argues, because legal authority already exists that governs the production of documents, the request is not subject to the Act. Section 552.0055 of the Government Code provides, "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under [the Act]." Gov't Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (stating in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed legislature tried to say what it meant and its words are, therefore, surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) ("In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written." (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994))).

The authority does not assert the request the city received is in fact a "subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure." Gov't Code § 552.0055. Furthermore, the authority has not demonstrated, and the request does not indicate, the request for information constitutes a discovery request issued in compliance with a statute or a rule of civil or criminal procedure. Although discovery in a contested case is conducted under the Texas Rules of Civil Procedure, nothing prevents the requestor from also submitting a request for information under the Act. Therefore, we find the city received a request for information under the Act. Consequently, we will consider the claimed exceptions to disclosure for the information at issue.

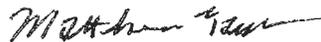
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing*

*Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The city states it has specific marketplace interests in the information at issue because the city is competing in the Electric Reliability Council of Texas competitive wholesale bulk-power market. In addition, the city states the submitted information relates to its “costs involved in the generation of power” and release would “damage its competitive position in the marketplace.” After review of the information at issue and consideration of the arguments, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a).<sup>2</sup>

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](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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/dls

Ref: ID# 615229

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

---

<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.