



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2016

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

OR2016-14547

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# 616001.

The Texas General Land Office (the "GLO") received a request for a specified contract and the record of monthly billings under the contract through a specified date. The GLO states it has released some information. The GLO claims some of the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. The GLO also states release of the submitted information may implicate the proprietary interests of Cavallo TSPP ("Cavallo"). Accordingly, the GLO states, and provides documentation showing, it notified Cavallo 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 considered the exceptions the GLO claims and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public

disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Cavallo explaining why the submitted information should not be released. Therefore, we have no basis to conclude Cavallo has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the GLO may not withhold the submitted information on the basis of any proprietary interest Cavallo may have in the information.

Section 552.104(a) of the Government Code exempts 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 GLO states it has specific marketplace interests in the information at issue because the GLO is competing with private companies for the right to sell electrical energy to public retail customers. In addition, the GLO states release of any part of the contract at issue would put the GLO at a great disadvantage in the marketplace because this information details services, and the GLO's business strategies, business methodologies, pricing formulas, and pricing structures. The GLO further states release of the billing information at issue would cause specific harm to the GLO's marketplace interests because it would allow the GLO's competitors to reverse-engineer the amount to determine the specific details of pricing structures and special options provided to the GLO's customers. After review of the information at issue and consideration of the arguments, we find the GLO has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the GLO may withhold the information it has marked under section 552.104(a) of the Government Code.¹ As no further exceptions against disclosure have been raised, the GLO must release the remaining information.

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/>

¹As our ruling is dispositive, we need not address the GLO's remaining argument against disclosure of this information.

[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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 616001

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)