



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2016

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2016-21195

Dear Mr. Trevino:

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# 626973 (PIR No. W053253).

The City of Fort Worth (the "city") received a request for a specified contract. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the interests of the Texas General Land Office (the "GLO"). Accordingly, you state, and provide documentation showing, you notified the GLO of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received arguments from the GLO. We have considered the submitted arguments and reviewed the submitted information.

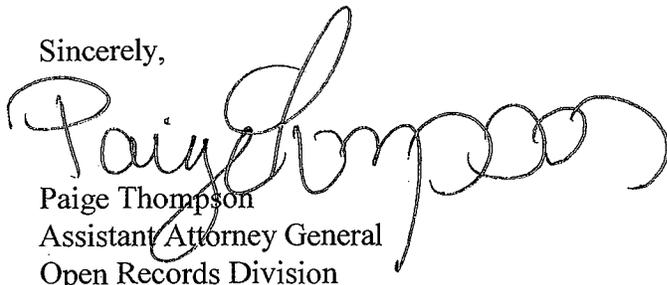
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The GLO informs us it is authorized by statute to sell or otherwise convey power generated from royalties taken in kind. Util. Code § 35.102. The GLO advises us, under that authority, it has created the State Power Program, with Reliant Energy Solutions and Cavallo Energy Texas, L.L.C. as its representatives, through which it bids on contracts for the right to sell electrical energy to public retail customers. The GLO states it competes with private companies for the awards of these contracts. Additionally, the GLO contends the release of its electricity contract with the city would put the GLO at a disadvantage in future bids because this information details services, and the GLO's business strategies, business methodologies, pricing formulas, and pricing structures. The GLO further asserts release of this information would allow competitors to

gain insight into the GLO's business and marketing strategies, and this would put the GLO at a disadvantage in the marketplace. Thus, the GLO argues allowing competitors access to the information at issue will undermine its ability to compete in this marketplace. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d 831 at 831, 839. Based on the GLO's representations and arguments, we conclude the GLO has shown that release of the information at issue would give advantage to a competitor or bidder. 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.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

¹As our ruling is dispositive, we do not address the GLO's remaining argument to withhold this information.

Ref: ID# 626973

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)