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Mr. John B. Atkins
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OR2015-07282

Dear Mr. Atkins:

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# 559986.

The Amarillo Economic Development Corporation (the "corporation"), which you represent, received two requests from the same requestor for documents related to specified disbursements, payments, and purchases made by Golden Spread Electric Cooperative ("GSEC") during a specified time period in accordance with a specified agreement between the corporation and GSEC. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. Further, you state release of the submitted information may implicate the proprietary interests of GSEC. Accordingly, you state, and provide documentation showing, you notified GSEC 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 GSEC. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor asserts portions of the submitted information were previously submitted by GSEC to the Federal Energy Regulatory Commission and are now in the public domain; further, the requestor has sent copies of such information to this office. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, we note the information sent to this office by the requestor is not the same as the information submitted to this office by the corporation. Further, the corporation does not indicate the submitted information has been previously released to the public. Whether the information at issue was released is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. As such, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Accordingly, we find section 552.007 of the Government Code is inapplicable to the submitted information, and we will consider the submitted arguments.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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 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 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).

You state the corporation's primary purpose is to provide incentives to private companies to create and retain jobs in Amarillo and the surrounding area. You state these private companies compare incentives offered by the corporation with incentives offered by other economic development companies and agencies. You contend this places the corporation in direct competition with these other entities in carrying out its purpose. Based on your

representations and our review, we find you have demonstrated the corporation has a specific marketplace interest and may be considered a “competitor” for purposes of section 552.104.

You explain the submitted information details the compensation and local spending of GSEC, which must be reported to the corporation in order to receive consideration for incentive grants. Further, you state the corporation does not have the option of providing an incentive grant without receiving such information. Thus, you argue release of the submitted information, from which competitors of GSEC could glean GSEC’s business plans, would decrease the corporation’s bargaining power, or prevent the corporation from offering incentives altogether, because target companies like GSEC would be reluctant or unwilling to provide such information if the target companies knew the corporation would be required to release such information. Based on your representations and our review, we find you have demonstrated the release of the submitted information would cause specific harm to the corporation’s marketplace interests. Accordingly, the corporation may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the corporation’s remaining argument.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 559986

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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