KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 8, 2016

Ms. Kasey Feldman-Thomason
General Law Attorney
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2016-05424

Dear Ms. Feldman-Thomason:

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# 601158 (PUC ID No. 2015-08-020).

The Public Utility Commission of Texas (the "commission") received a request for seven categories of information pertaining to specified entities during a specified time period.[1] You state you have provided some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.136, and 552.137 of the Government Code.[2] You also state release of the remaining information may implicate the interests of Ambit Energy ("Ambit") and the Electric Reliability Council of Texas ("ERCOT"). Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting 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

[1]We note the commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

[2]Although you also raise section 552.116 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Ambit and ERCOT. We have considered the submitted arguments and reviewed the submitted information, a portion of which constitutes a representative sample.[3]

Initially, we note you indicated portions of the submitted information as not responsive to the clarified request for information. This ruling does not address the public availability of non-responsive information, and the commission need not release non-responsive information to the requestor.

The commission and ERCOT assert portions of the responsive information are confidential under section 552.101 of the Government Code in conjunction with the ERCOT Protocols and Operating Guidelines. We note ERCOT is the independent system operator established by section 39.151 of the Public Utility Regulatory Act, Title II of the Texas Utilities Code. *See* Util. Code § 39.151. Under section 39.151, ERCOT is directly responsible and accountable to the commission. *See id.* § 39.151(d). Pursuant to section 39.151(d) of the Utilities Code, the commission has adopted Substantive Rule 25.362(e)(1)(A), which provides that "[i]nformation submitted to or collected by ERCOT pursuant to requirements of ERCOT rules shall be protected from public disclosure only if it is designated as Protected Information pursuant to ERCOT rules[.]" P.U.C. Subst. R. 25.362(e)(1)(A); *see also* Util. Code § 39.151(d) (providing that the commission shall adopt and enforce rules related to production and delivery of electricity among all market participants, and may delegate to independent organization responsibilities for establishing or enforcing such rules).

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 1.3.1 of the ERCOT Nodal Protocols states that ERCOT or any market participant may not disclose "Protected Information" received from the other to "any other Entity except as specifically permitted in this Section and in these Protocols." ERCOT Nodal Protocols § 1.3.1. Among other things, "Protected Information" is defined as follows:

> Number of [Electronic Service Identifier ("ESI")] IDs identifiable to a specific [Load Serving Entity ("LSE")]. The Protected Information status of this information shall expire 365 days after the applicable Operating Day[.]

ERCOT Nodal Protocols § 1.3.1.1(1)(k). An LSE is defined as follows:

> An Entity that sells energy to Customers or Wholesale Customers and that has registered as an LSE with ERCOT. LSEs include Competitive Retailers

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[3]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 those records contain substantially different types of information than that submitted to this office.

> (which includes [sic] [Retail Electric Providers]) and [Non-Opt-In Entities] that serve Load and [External Load Serving Entities].

Id. § 2.1. For purposes of the ERCOT Nodal Protocols, "Operating Day" means the day during which energy flows. *See id.* The commission and ERCOT explain some of the responsive information "concern[s] customer counts and [ESI IDs] identifiable to particular Retail Electric Providers[,]" and, therefore, this information falls within the definition of Protected Information. ERCOT asserts the information at issue is confidential in its entirety. However, the commission indicates, and the responsive information reveals, some of the information at issue is older than 365 days. Based on these representations and our review of the relevant provisions, we agree some of the information ERCOT seeks to withhold, which we have indicated, consists of Protected Information that must be withheld under section 552.101 of the Government Code in conjunction with section 39.151(d) of the Utilities Code and the ERCOT Nodal Protocols. However, we find the remaining information does not consist of Protected Information, and it may not be withheld under section 552.101 on the basis of the ERCOT Nodal Protocols.

Section 552.101 of the Government Code also encompasses information protected by section 17.004 of the Utilities Code. Section 17.004 provides in part that "[a]ll buyers of telecommunications and retail electric services are entitled to . . . privacy of customer consumption and credit information[.]" Util. Code § 17.004(a)(6). Upon review, we agree the information you marked consists of individual customers' electric consumption and credit information for purposes of section 17.004. Accordingly, the information you marked under section 17.004 of the Utilities Code is confidential, and must be withheld pursuant to section 552.101 of the Government Code.[4]

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we

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[4]As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.103 of the Government Code provides as follows:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
>
> . . .
>
> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551. We note contested cases conducted under the Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, are considered litigation for purposes of section 552.103. *See* Open Records Decision No. 588 (1991).

To establish litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect that litigation is "realistically contemplated." *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is

"reasonably likely to result"). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

You inform us the information you indicated pertains to a "compliance review of [Retail Electric Providers] providing residential electric service[.]" You state Ambit is one of the subjects of that investigation, and should the investigation find that Ambit violated the Public Utility Regulatory Act ("PURA") or the commission's rules, the commission would proceed with an enforcement action against Ambit. You further state enforcement actions taken by the commission under PURA would result in a contested case under the APA. Accordingly, you assert the commission reasonably anticipates litigation pertaining to the potential enforcement action. Based on your representations and our review, we determine the commission reasonably anticipated litigation when it received the request for information. We also find the commission has established the information at issue relates to the anticipated litigation for purposes of section 552.103(a). Therefore, we find the information you indicated is subject to 552.103 of the Government Code.

We note, however, the opposing party has seen or had access to the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Thus, once the opposing party has seen or had access to information relating to the anticipated litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Upon review, we find the information at issue was seen by the opposing party to the anticipated litigation and may not be withheld under section 552.103 of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to

a *confidential* communication, *id.* 503(b)(1), meaning it was "not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You claim the information you indicated is protected by section 552.107(1) of the Government Code. You state the information at issue consists of communications between commission attorneys and representatives. You state the communications were made for the purpose of facilitating the rendition of professional legal services to the commission. You further state these communications were intended to be confidential and have been maintained as confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the commission may generally withhold the information you indicated under section 552.107(1) of the Government Code.[5] We note, however, one of these e-mail strings includes an e-mail received from a party with whom you have not demonstrated the commission shares a privileged relationship. Furthermore, if the e-mail received from the non-privileged party is removed from the e-mail string and stands alone, it is responsive to the request for information. Therefore, if the non-privileged e-mail, which we have marked, is maintained by the commission separate and apart from the otherwise privileged e-mail string in which it appears, then the commission may not withhold this non-privileged e-mail under section 552.107(1) of the Government Code.

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." *See* Gov't Code § 552.111. This section encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

> (1) [M]aterial prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

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[5]As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

> (2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. *Id.*; ORD 677 at 6-8. In order for this office to conclude that the information was made or developed in anticipation of litigation, we must be satisfied that

> a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

Nat'l Tank Co. v. Brotherton, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204; ORD 677 at 7.

You argue the information you indicated consists of attorney work product under section 552.111. You state the information at issue reflects materials prepared, mental impressions, and/or communications developed by commission attorneys or at the direction of commission attorneys in anticipation of potential litigation. Upon review, we find the commission has demonstrated the information at issue was prepared in anticipation of litigation. Therefore, the commission may withhold the information you indicated under section 552.111 of the Government Code as attorney work product.

Section 552.111 also encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22

S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). Additionally, section 552.111 does not generally except from disclosure purely factual information severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

This office has also concluded a preliminary draft of a document intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

Section 552.111 can also encompass communications between a governmental body and a third-party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561 at 9.

You argue the deliberative process privilege is applicable to the information you indicated. You also inform us the information at issue includes draft documents that reflect the deliberations of the commission's employees. You state the final versions of these draft documents will be released to the public in their final forms. Based on your representations and our review, with the exception of the information we have marked for release, we find the commission may withhold the information you indicated under section 552.111 of the Government Code. However, we find the remaining information at issue consists of information that is administrative or purely factual in nature or consists of communications with an individual the commission has failed to demonstrate a shared privity of interest or common deliberative process. Accordingly, the commission may not withhold the remaining information at issue under section 552.111.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, the commission must withhold the account numbers you marked and we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the commission must withhold the personal e-mail addresses you marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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). Ambit states it has competitors. In addition, Ambit states release of the information at issue would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Ambit has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information we have indicated under section 552.104(a) of the Government Code.[6]

Some of the remaining information may be subject to section 552.117 of the Government Code.[7] Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers,

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[6]As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

[7]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the commission must withhold the information we have marked under section 552.117(a)(1); however, the cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the commission must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 39.151(d) of the Utilities Code and the ERCOT Nodal Protocols. The commission must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 17.004 of the Utilities Code. The commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission may generally withhold the information you indicated under section 552.107(1) of the Government Code; however, the commission may not withhold the non-privileged e-mail we have marked if it is maintained separate and apart from the otherwise privileged e-mail string in which it appears. The commission may withhold the information you indicated under section 552.111 of the Government Code as attorney work product. With the exception of the information we have marked for release, the commission may withhold the information you indicated under section 552.111 of the Government Code and the deliberative process privilege. The commission must withhold the account numbers you marked and we have marked under section 552.136 of the Government Code. The commission must withhold the personal e-mail addresses you marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The commission may withhold the information we have indicated under section 552.104(a) of the Government Code. If the

individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the commission must withhold the information we have marked under section 552.117(a)(1); however, the cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service. The commission must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 601158

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Stephen C. Rasch
Counsel for Ambit Holdings, LLC
Thompson & Knight, LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201-2533
(w/o enclosures)

Mr. Nathan Bigbee
Assistant General Counsel
ERCOT
7620 Metro Center Drive
Austin, Texas 78744
(w/o enclosures)

Filed in The District Court
of Travis County, Texas

APR 26 2019

At 1:47 p M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-16-001478

AMBIT ENERGY HOLDINGS, LLC; AMBIT MARKETING, LLC; AMBIT SYSTEMS, INC.; AMBIT TEXAS, LLC; AMBIT HOLDINGS, LLC; AMBIT MANAGEMENT, INC.,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	TRAVIS COUNTY, TEXAS
KEN PAXTON, ATTORNEY GENERAL OF TEXAS; PUBLIC UTILITY COMMISSION OF TEXAS; DONNA NELSON; KENNETH ANDERSON, JR.; AND BRANDY MARQUEZ,	§	
Defendants.	§	250TH JUDICIAL DISTRICT

ORDER GRANTING JOINT MOTION TO DISMISS WITHOUT PREJUDICE

Before the Court is the joint motion to dismiss without prejudice filed by Plaintiffs Ambit Energy Holdings, LLC; Ambit Marketing, LLC; Ambit Systems, Inc.; Ambit Texas, LLC; Ambit Holdings, LLC; and Ambit Management, Inc. and Defendants Ken Paxton, Attorney General of Texas, Public Utility Commission of Texas, Donna Nelson, Kenneth Anderson, Jr., and Brandy Marquez (collectively, the "Parties"). The Court determines that the joint motion to dismiss without prejudice should be, and hereby is, GRANTED.

Accordingly, this lawsuit is dismissed without prejudice, with all Parties to bear their own costs and attorney's fees. Any relief not requested is denied.

Dated: April 26, 2019.

Presiding Judge

AMY CLARK MEACHUM

ENTERED
MR