



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2016

Ms. Akilah Mance
Counsel for the City Hempstead
Olson & Olson
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133

OR2016-26796

Dear Ms. Mance:

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# 636331 (Ref. No. COH16-014).

The City of Hempstead (the "city"), which you represent, received a request for ten categories of information related to utility billing and contracts with the city. You state you will release some information to the requestor. You state the city will redact information under sections 552.130(c), 552.136, and 552.147(b) of the Government Code and in accordance with Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.133 and 552.136 of the Government Code. Additionally, you state you notified the Lower Colorado River Authority

¹Section 552.130 of the Government Code authorizes a governmental body to redact motor vehicle record information without a decision from this office, but the governmental body must notify the requestor. *See* Gov't Code § 552.130(c)–(e). Section 552.136 of the Government Code authorizes a governmental body to redact an access device number without a decision from this office, but the governmental body must notify the requestor. *See id.* § 552.136(c)–(e). Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

(the “authority”) of its right to submit comments to this office as to why its information should not be released. *See* Gov’t Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have received comments from the authority. 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.” *Id.* § 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, 841 (Tex. 2015). The authority states it has competitors. In addition, the authority states the release of the submitted information would jeopardize its position in the competitive electric market and provide an advantage to competitors in that market. For many years, this office concluded the prices charged to a governmental body 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 at 832. After review of the information at issue and consideration of the arguments, we find the authority 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).²

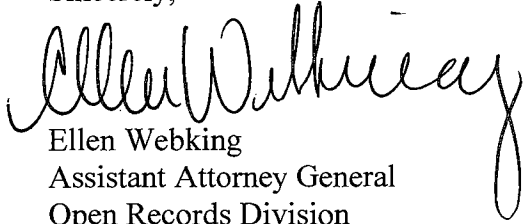
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen Webking". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 636331

Enc. Submitted documents

c: Requestor
(w/o enclosures)