



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 4, 2017

Ms. Kaye H. Edwards  
City Attorney  
City of Big Spring  
310 Nolan Street  
Big Spring, Texas 79720-2657

OR2017-06990

Dear Ms. Edwards:

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# 651484.

The City of Big Spring (the "city") received a request for information pertaining to the city's current electricity contract. You claim some of the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of MidAmerican Energy Services, LLC ("MidAmerican"). Accordingly, you state, and provide documentation showing, you notified MidAmerican 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 MidAmerican. We have reviewed the submitted information and the submitted arguments.

Although the city contends some of the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepting from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "[c]ommercial or financial information for

which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained”). Thus, we do not address the city’s argument under section 552.110.

MidAmerican argues portions of its information are excepted from disclosure under section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm).

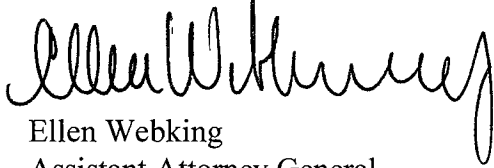
MidAmerican argues its pricing information consists of commercial information, the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. However, we note MidAmerican was the winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public interest. Thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep’t of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Upon review, we find MidAmerican has not established the information at issue constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Accordingly, none of MidAmerican’s information may be withheld under section 552.110(b) of the Government Code. Therefore, as no other exceptions to disclosure have been raised, the city must release the submitted 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/orl\\_ruling\\_info.shtml](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,

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# 651484

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)