



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2017

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2017-14646

Dear Ms. Pemberton:

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# 664558 (ORR# W021999).

The City of Killeen (the "city") received a request for the city's active electricity contract. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary 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 submitted information should not be released. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have received comments from the GLO. We have reviewed the submitted information and the submitted arguments.

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 (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 contracts with the city would put the GLO at a disadvantage in future bids because this information details services, and the GLO's 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 great 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. Based on the GLO's representations and arguments, we conclude the GLO has shown 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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/tdw

Ref: ID# 664558

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address the GLO's remaining argument against disclosure of the submitted information.