



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2017

Mr. Neal Falgoust
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2017-16904

Dear Mr. Falgoust:

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# 668470 (PIR No. 34335).

The City of Austin's (the "city") municipally-owned electric utility, Austin Energy, received a request for communications between specified individuals pertaining to specified subjects during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We also understand release of the submitted information may implicate the proprietary interests of CPS Energy ("CPS") and NRG Energy, Inc. ("NRG"). Accordingly, you state, and provide documentation showing, you notified CPS and NRG of the request for information and of their rights 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 CPS and NRG. We have considered the submitted arguments and reviewed the submitted information.

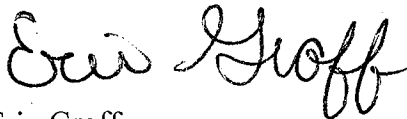
Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The city states it has specific marketplace interests in

the information at issue because the city competes with other electric utilities and qualified scheduling entities. In addition, the city states release of the information could cause harm by “provid[ing] competitors insight into the [c]ity’s power plant operating costs and damage its competitive position in the marketplace.” Based on these representations and our review, we find the city has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Further, we find you have demonstrated release of the submitted information would cause specific harm to the city’s marketplace interests. We therefore 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 668470

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.