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ATTORNEY GENERAL OF TEXAS

August 15, 2017

Mr. Eddy Trevino
Counsel for the City of Donna
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4001 South Sugar Road, Suite 1A
Edinburg, Texas 78539

OR2017-18529

Dear Mr. Trevino:

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# 671300.

The City of Donna (the "city"), which you represent, received a request for a specified contract and the city's total annual usage of electricity. Although you take no position as to whether the submitted information is excepted under the Act, you inform us release of the submitted information may implicate the proprietary interests of the Cavallo Energy Texas, L.L.C. ("Cavallo") and the Texas General Land Office (the "GLO"). Accordingly, we understand you notified Cavallo and the GLO of the request for information and of their right to submit arguments to this office explaining why the submitted information should not be released.¹ *See* Gov't Code §§ 552.304, .305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Cavallo and 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." Gov't Code § 552.104(a). The

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nevertheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

“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. *See* Util. Code § 35.102. The GLO advises us, under that authority, it has created the State Power Program, with Cavallo as its representative, 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 contract with the city would put the GLO at an enormous 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 demonstrated release of the information at issue would give advantage to a competitor or bidder. Therefore, the city may withhold the information we have marked under section 552.104 of the Government Code.² As no other exceptions to disclosure have been raised, the city must release the remaining 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, 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

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

Ref: ID# 671300

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)