



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 11, 2017

Mr. Ricky Fritz  
President  
Scurry County Local Government Corporation  
1806 25th Street, Suite 200  
Snyder, Texas 79549

OR2017-23133

Dear Mr. Fritz:

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# 682553.

The Scurry County Local Government Corporation ("SCLGC") received a request for information pertaining to "the purchase or other acquisition by [SCLGC] of a production payment or other interest in oil or gas[.]" SCLGC does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, SCLGC states, and provides documentation showing, it notified Peak Energy Corporation ("Peak Energy") of SCLGC's receipt of the request for information and of Peak Energy's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 Peak Energy objecting to the release of some of the information at issue. We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, Peak Energy argues the request for information is overbroad. A governmental body must make a good-faith effort to relate a request to any responsive information that is within

its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Because SCLGC has submitted information for our review, we consider it to have made a good-faith effort to identify information responsive to the request. Therefore, we will address the applicability of the submitted arguments to the submitted information.

Next, we note Peak Energy has submitted to this office information it asserts is excepted from release under the Act. However, SCLGC did not submit this information for our review. This ruling does not address information beyond what SCLGC has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information SCLGC that submitted as responsive to the request. *See id.*

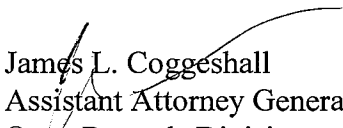
Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, the court concluded a private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). 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.” *Id.* Peak Energy states it has competitors. In addition, Peak Energy states release of the information it has marked under section 552.104 would cause it substantial competitive harm and seeks to withhold the terms of a contract. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder 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 the *Boeing* decision, 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 831, 839. After review of the information at issue and consideration of the arguments, we find Peak Energy has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude

SCLGC may withhold the information that we have indicated under section 552.104(a) of the Government Code.<sup>1</sup> SCLGC 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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/sb

Ref: ID# 682553

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)

---

<sup>1</sup>As our ruling is dispositive, we do not address Peak Energy's other argument to withhold this information.