



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2019

Ms. Hadassah Schloss
Director, Open Government
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2019-09837

Dear Ms. Schloss:

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# 759015 (GLO ID# 19-0332).

The General Land Office (the "GLO") received a request for a specified lease. You state the GLO has released some information. You claim portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of E.ON Climate and Renewables of North America, LLC ("E.ON"). Accordingly, you state, and provide documentation showing, you notified E.ON of the request for information and of its right to submit arguments to this office as to why the information at issue 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 E.ON. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter

No. 2016-18548 (2016). There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the GLO may continue to rely on Open Records Letter No. 2016-18548 as a previous determination and withhold or release the requested information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address your argument against disclosure for the submitted information, which is not subject to the prior ruling.

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 “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, 841 (Tex. 2015). You state the GLO has specific marketplace interests in the information at issue because it is competing with others to obtain solar-power leases. In addition, you assert release of the information you marked would put the GLO at a disadvantage in future negotiations related to this lease and other leases. After review of the information at issue and consideration of the arguments, we find the GLO has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the GLO may withhold the information you marked under section 552.104(a) of the Government Code.¹

In summary, the GLO may continue to rely on Open Records Letter No. 2016-18548 as a previous determination and withhold the identical information in accordance with that ruling. The GLO may withhold the information you marked under section 552.104(a) of the Government Code. The GLO 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

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

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 'Deborah Southerland', written in a cursive style.

Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 759015

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)