



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2019

Mr. Joseph R. Crawford
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2019-35025

Dear Mr. Crawford:

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# 800722 (GC Nos. 26174, 26178 & 26191).

The City of Houston (the "city") received three requests from different requestors for information pertaining to electricity rates and electric service identifiers. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Engie/SolaireHolman 1, LLC ("Engie") and Reliant Energy Retail Services, LLC ("Reliant"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right 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 Engie and Reliant. We have reviewed the submitted information and considered the submitted arguments.

Initially, we must address the city's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions

that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). We note some of the submitted information is responsive to all three of the requests for information. The city received the first request for this information on September 5, 2019. Accordingly, the city's ten-business-day deadline was September 19, 2019. However, we note you did not raise section 552.104 of the Government Code with respect to the information responsive to the first request until October 4, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the city failed to meet the ten-business-day deadline requirement as prescribed by section 552.301(b) of the Government Code in raising section 552.104 for some of the information at issue.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because section 552.133 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the information at issue. Additionally, we note third party interests can provide a compelling reason to overcome the presumption of openness. Accordingly, we will also consider whether the information at issue must be withheld under the Act based on a third party interest. However, we find you failed to establish a compelling reason to address your claim under section 552.104 for the information at issue. We will consider your timely raised claim under section 552.104 of the Government Code for the remaining information.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). Section 552.133 provides in relevant part:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(F) customer billing, contract, and usage information, electric power pricing information, system load

characteristics, and electric power marketing analyses and strategies[.]

Id. § 552.133(a), (a-1)(1)(F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). You assert the information at issue relates to the city’s municipal utility service. Thus, this information relates to a public power entity for purposes of section 552.133. You assert the information at issue pertains to the public power utility’s “competitive customer information.” Additionally, the information at issue is not among the fifteen categories of information expressly excluded from the definition of “competitive matter” by section 552.133(a-1)(2). Based on these representations and our review, we find the information at issue relates to competitive matters as defined by section 552.133(a-1). Therefore, the city must withhold the information we marked under section 552.133 of the Government Code.¹

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 city represents the remaining information pertains to an ongoing competitive bidding situation. In addition, the city states release of the information at issue would cause competitive harm. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the remaining information under section 552.104(a) of the Government Code.²

In summary, the city must withhold the information we marked under section 552.133 of the Government Code. The city may withhold the remaining information under section 552.104(a) of the Government Code.

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.

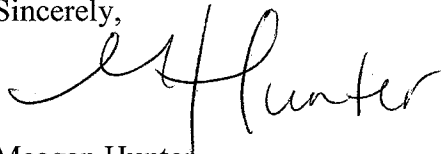
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

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

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

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Meagan Hunter". The signature is written in a cursive style with a large initial "M" and "H".

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/gw

Ref: ID# 800722

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

c: 2 Third Parties
(w/o enclosures)