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ATTORNEY GENERAL OF TEXAS

December 12, 2019

Mr. Rodrigo J. Figueroa
Counsel for Floresville Electric Light & Power System
Dykema Gossett PLLC
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205

OR2019-35144

Dear Mr. Figueroa:

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# 801608.

The Floresville Electric Light & Power System (the "system"), which you represent, received a request for a specified pay study. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state release of the submitted information may implicate the interests of Intelligent Compensation, LLC ("IC"). Accordingly, you notified IC of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 IC. We have considered the submitted arguments and reviewed the submitted information.

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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (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.* at 841. IC states it has competitors. In addition, IC states disclosure of the information at issue would place the company at a significant competitive disadvantage.

After review of the information at issue and consideration of the arguments, we find IC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a) 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 <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 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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/rm

Ref: ID# 801608

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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