



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2020

Ms. Lisandra Leal
Records Analyst
City of North Richland Hills
P.O. Box 820609
North Richland Hills, Texas 76182

OR2020-17333

Dear Ms. Leal:

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# 835662 (Ref. No. W003070-042820).

The City of North Richland Hills (the "city") received a request for information pertaining to the city's electricity bill. The city claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of Gexa Energy, L.P. ("Gexa") and Texas Coalition for Affordable Power, Inc. Accordingly, the city states, and provides documentation showing, it 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 Gexa. We have reviewed the submitted information and considered the submitted arguments.

Initially, the city asserts, and we agree, some of the submitted information, which the city has marked, is not responsive to the instant request for information because it does not pertain to the specific information requested. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release such information in response to this request.¹

¹ As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest the remaining third party may have in the information.

The city and Gexa argue section 552.104 of the Government Code. Section 552.104 exempts from disclosure information "if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code § 552.104(a). Therefore, we do not address Gexa's arguments under section 552.104 of the Government Code. 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*, 466 S.W.3d at 841. After review of the information at issue and consideration of the city's arguments, we find the city has failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the city may not withhold the information at issue under section 552.104(a) of the Government Code.

Section 552.110(c) of the Government Code states:

(c) Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

Gov't Code § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Gexa argues portions of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Therefore,

the city may not withhold any of the responsive information under section 552.110(c) of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”² *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the bank account number within the responsive information under section 552.136 of the Government Code. As no further exceptions to disclosure have been raised, the city must release the remaining responsive 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 <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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/mo

Ref: ID# 835662

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).