



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 15, 2020

Mr. Matthew L. Butler  
Counsel for the City of Grapevine  
Boyle & Lowry, L.L.P.  
4201 Wingren Road, Suite 108  
Irving, Texas 75062-2763

OR2020-17551

Dear Mr. Butler:

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# 835963.

The City of Grapevine (the "city"), which you represent, received a request for information pertaining to electricity contracts. Although the city takes no position regarding whether the submitted information is excepted from disclosure under the Act, the city informs us its release may implicate the proprietary interests of Gexa Energy, LP ("Gexa"). Accordingly, the city states, and provides documentation showing, it notified Gexa of the request for information and of its right to submit arguments to this office. *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 considered the submitted arguments and reviewed the submitted information.

We understand Gexa to assert that its contract is confidential because the contract contains a confidentiality provision. We note that information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under

[the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Gexa argues the information at issue is subject to section 552.110 of the Government Code. Section 552.110(b) states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See* Gov’t Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). 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].

*Id.* § 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 the information at issue consists of trade secrets subject to section 552.110(b).<sup>1</sup> Additionally, Gexa argues the information at issue consists of commercial or financial information subject to section 552.110(c). However, upon review, we find some of the information Gexa seeks to withhold is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. *See id.* Additionally, we find Gexa has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Further, we find Gexa has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the city may not withhold any of the information at issue under section 552.110(b) or section 552.110(c) of the Government Code. As no

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<sup>1</sup> Although Gexa cites to section 552.110(a) of the Government Code in its brief, we understand it to raise section 552.110(b) of the Government Code based on the substance of its arguments.

further arguments against disclosure are made, the city must release the submitted 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/jlbm

Ref: ID# 835963

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)