



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2020

Ms. Marie N. Johnson
Counsel for the Town of Addison
Messer, Fort & McDonald
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2020-19468

Dear Ms. Johnson:

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# 838330 (ORR ID: 7572).

The Town of Addison (the "town"), which you represent, received a request for the town's current electricity services agreement, including particular information. Although the town takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Gexa Energy, LP ("Gexa"). Accordingly, you state, and provide documentation showing, you notified Gexa. of the request for information and of the right to submit arguments to this office as to why the submitted 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 Gexa. We have considered the submitted arguments and reviewed the submitted information.

Gexa asserts the submitted information 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). We note section 552.0222(b) of the Government Code lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Gexa asserts its information consists of trade secrets and commercial or financial information subject to section 552.110. However, we find some of the submitted information is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. *See id.* Further, we find Gexa has failed to provide specific factual evidence demonstrating any portion of the rest of the information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the town may not withhold any of the submitted information under section 552.110(b) or 552.110(c) of the Government Code. As no further arguments against disclosure have been raised, the town 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/mo

Ref: ID# 838330

Enc. Submitted documents

c: Requestor
(w/o enclosures)