



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 14, 2020

Ms. Kasey Feldman-Thomason
General Counsel
Public Utility Commission of Texas
Post Office Box 13326
Austin, Texas 78711-3326

OR2020-25878

Dear Ms. Feldman-Thomason:

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 #848123 (2020-07-023).

The Public Utility Commission of Texas (the "commission") received a request for information pertaining to the cost of the Operating Reserve Demand Curve and the Reliability Deployment Price Adder during a specified time period, including specified communications. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of a third party.¹ Accordingly, you state, and provide documentation showing, you notified Potomac Economics, Ltd. ("Potomac") 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 Potomac. We have also received and considered comments from Argus Media, Inc. ("Argus") and the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should

¹ We note that although you initially raised section 552.111 of the Government Code, you withdraw your claim this section applies to the submitted information in correspondence to our office dated September 16, 2020. Accordingly, we do not address the applicability of this section to the submitted information.

not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 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). Potomac argues some of the submitted information consists of trade secrets subject to section 552.110(b). Upon review, we find Potomac has failed to provide specific factual evidence demonstrating any portion of the submitted information is a trade secret. Therefore, the commission may not withhold any of the submitted information under section 552.110(b) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Id. § 552.1101(a). Argus generally asserts disclosure of some of the information at issue would give advantage to a competitor. Upon review, we find Argus has failed to provide the specific factual evidence necessary to withhold any of the submitted information at issue under section 552.1101(a), and the commission may not withhold it on that basis. The commission 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/be

Ref: ID# 848123

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Party
(w/o enclosures)