



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2022

Ms. Hadassah Schloss
Open Government Director
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2022-30743

Dear Ms. Schloss:

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# 973275 (Ref. No. 22-0838).

The General Land Office (the "GLO") received a request for information between named entities pertaining to a specified request for proposals. You state the GLO has released some information in accordance with a previous ruling from this office. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Although the GLO takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Carbonvert Inc. ("Carbonvert") and Talos Energy Inc. ("Talos"). Accordingly, you state, and provide documentation showing, the GLO notified these 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 exceptions in the Act in certain circumstances). We have received comments from Talos. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 Carbonvert explaining why the submitted information should not be released. Therefore, we have no basis to conclude Carbonvert has a protected proprietary interest in the submitted information. *See id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the GLO may not withhold the submitted information on the basis of any proprietary interest Carbonvert may have in the information.

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). Talos argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Talos has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. However, we find some of the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Accordingly, the GLO must withhold the information we marked under section 552.110(c) of the Government Code.¹

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

(a) Except as provided by Section 552.0222, information 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 contract 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) organization 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.

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

Id. § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Talos asserts disclosure of the information at issue would reveal an individual approach to its internal processes, discounts, or pricing methodology and give advantage to a competitor. However, we find the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101. Therefore, the GLO may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

In summary, the GLO must withhold the information we marked under section 552.110(c) of the Government Code. The GLO must release the remaining 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,

Sarah E. Reese
Attorney
Open Records Division

SER/pt

Ref: ID# 973275

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)