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ATTORNEY GENERAL OF TEXAS

December 1, 2022

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2022-37156

Dear Mr. Ramirez:

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# 983054.

The Lower Colorado River Authority (the "authority") received a request for two categories of information pertaining to a specified awarded proposal. You state you have released some information. Although you take 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 Protiviti Inc. ("Protiviti"). Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and 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 arguments from Protiviti. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(b) of the Government Code 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." 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 exempts from disclosure “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[.]” *Id.* § 552.110(c). Protiviti states the information at issue consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find Protiviti has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, to the extent Protiviti’s customer information is not made available to the public by Protiviti, including but not limited to on their respective company websites or social medial accounts, the authority must withhold Protiviti’s customer information under section 552.110(c) of the Government Code.¹ However, to the extent Protiviti’s customer information is made available to the public by Protiviti, including but not limited to on their respective company websites or social media accounts, it may not be withheld under section 552.110. Regardless, the authority must withhold the information we have marked under section 552.110(c) of the Government Code. However, we find Protiviti has failed to provide specific factual evidence demonstrating the remaining 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 authority may not withhold any of the remaining information at issue under section 552.110 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 [required disclosure] 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;

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

(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). Protiviti asserts some of the remaining information is subject to section 552.1101(a) and would give advantage to a competitor. Upon review, we find Protiviti has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the authority may not withhold it on that basis.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." *Id.* § 552.133(b). Section 552.133 provides in relevant part:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts;

(D) risk management information, contracts, and strategies, including fuel hedging and storage;

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission

and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

Id. § 552.133(a)-(a-1)(1). We note section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *See id.* § 552.133(a-1)(2). However, upon review, we find Protiviti has failed to demonstrate their remaining information at issue relates to a competitive matter as defined by section 552.133(a-1). *See id.* § 552.133(a-1)(1)(A)-(F). The authority may not withhold any portion of the remaining information under section 552.133.

In summary, to the extent Protiviti's customer information is not made available to the public by Protiviti, including but not limited to on their respective company websites or social medial accounts, the authority must withhold Protiviti's customer information under section 552.110(c) of the Government Code. The authority must withhold the information we have marked under section 552.110(c) of the Government Code. The remaining information must be released.

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,

Anthony Crabtree
Attorney
Open Records Division

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Ref: ID# 983054

c: Requestor