



November 22, 2000

Mr. David L. Jackson
Wallace, Jackson, Machann, Williams & Douglass
820 Main Street, Suite 100
Kerrville, Texas 78028-5300

OR2000-4496

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 141525.

The City of Kerrville (the “city”), which you represent, received a request for “a list of annual salaries for all individual Kerrville Public Utility Board employees for the 1999-2000 fiscal year, including names, positions, and salaries.” You claim that the requested information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.131, as added by Senate Bill 7,² generally excepts from disclosure a public power utility’s information related to a competitive matter. The exception defines “competitive matter” as

a utility-related matter that the public power utility governing body in good faith determines by vote under this section is related to the public power utility’s competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors but may not be deemed to include the following categories of information:

...

¹The submitted information consists of two charts showing salary information regarding the utility board’s employees. We note that the submitted charts pertain to the 2000-2001 fiscal year while the requestor asks for information regarding the 1999-2000 fiscal year. Because we assume that the information pertaining to the 1999-2000 fiscal year is similar to the submitted information, we consider the analysis in this ruling to be applicable to the 1999-2000 information that was actually requested.

²Act of May 27, 1999, 76th Leg., R.S., ch. 405, § 46 (codified at Gov’t Code § 552.131).

(E) aggregate information reflecting receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements.

Further, section 552.131(b) provides:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.131(b). The attorney general may conclude that section 552.131 is inapplicable to the requested information only if, based on the information provided, the attorney general determines the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. Gov't Code § 552.131(c).

The submitted materials show that the Kerrville Public Utility Board (the "board") passed a resolution by vote pursuant to section 552.131 in which it defined the term "competitive matter" to include, among other things, "Business Operations Information, including . . . [p]ersonnel staffing levels and compensation." We believe that this definition covers much of the submitted information. However, the submitted information includes a figure that represents the total estimated amount of the combined 2000-2001 salaries of the board's full-time employees. We find that this figure constitutes "aggregate[d] information reflecting receipts or expenditures of funds of the public power utility, the type that would be included in audited financial statements." See Gov't Code § 552.131(a)(3)(E). Consequently, this aggregate figure may not be construed to relate to a "competitive matter" for the purposes of section 552.131. Moreover, you do not argue and we do not find that the names and position titles that appear on the submitted charts fall under any of the definitions of "competitive matter" that the board adopted in the submitted resolution. Therefore, the names and position titles also may not be construed to relate to a "competitive matter" for

the purposes of section 552.131. Therefore, while the city may withhold most of the submitted information under section 552.131, it must release the total salary figure that we have marked as well as the names and position titles to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

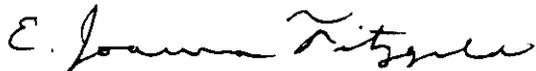
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 141525

Encl: Submitted documents

cc: Ms. Bonnie Arnold
News Editor
The Mountain Sun
301 McFarland
Kerrville, Texas 78028
(w/o enclosures)