



February 13, 2001

Mr. Michael J. Consentino  
City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2001-0542

Dear Mr. Consentino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144130.

The City of Bryan (the "city") received a request for information concerning customers of Bryan Texas Utilities ("BTU") and another request for pricing information pertaining to potential BTU contractors. You have submitted representative samples of information that you state are responsive to items 1 through 8 of the request concerning BTU customers. You have also submitted representative samples of information that you state are responsive to the request for contractor pricing information. You claim that the requested information is excepted from disclosure under sections 552.104, 552.110, and 552.131 of the Government Code. You assert that you have no information relating to item 9 of the request concerning BTU customers. We have considered the exceptions you claim and have reviewed the submitted information.<sup>1</sup> We have also received and considered the requestor's letter to us dated December 17, 2000.

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<sup>1</sup>This letter ruling assumes that the representative sample of responsive information that you submitted is truly representative of the requested information as a whole. This letter ruling does not reach, and therefore does not authorize you to withhold, any other requested information that is substantially different from the information that was submitted. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

First, we address your assertion relating to item 9 of the first request that “there is no software company or specific program that is used by BTU to ‘keep tract [sic] of the loans and payment records as they are specified on the HVAC Loan Contract Program’.” We note that the Public Information Act (the “Act”) does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975), 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). Thus, the Act only applies to information already in existence. *See* Gov’t Code §§ 552.002, .021, .227, .351.

Next, we turn to your claim regarding section 552.131 of the Government Code. Section 552.131, the “public power utility competitive matters” exception, provides:

(a) In this section:

(1) “Public power utility” means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(2) “Public power utility governing body” means the board of trustees or other applicable governing body, including a city council, of a public power utility.

(3) “Competitive matter” means a utility-related matter that the public power utility governing body in good faith determines by a 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:

(A) information relating to the provision of distribution access service, including the terms and conditions of the service and the rates charged for the service but not including information concerning utility-related services or products that are competitive;

(B) information relating to the provision of transmission service that is required to be filed with the Public Utility Commission of Texas, subject to any confidentiality provided for under the rules of the commission;

(C) information for the distribution system pertaining to reliability and continuity of service, to the extent not security-sensitive, that relates to emergency management, identification of critical loads such as hospitals and police, records of interruption, and distribution feeder standards;

(D) any substantive rule of general applicability regarding service offerings, service regulation, customer protections, or customer service adopted by the public power utility as authorized by law;

(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;

(F) information relating to equal employment opportunities for minority groups, as filed with local, state, or federal agencies;

(G) information relating to the public power utility's performance in contracting with minority business entities;

(H) information relating to nuclear decommissioning trust agreements, of the type required to be included in audited financial statements;

(I) information relating to the amount and timing of any transfer to an owning city's general fund;

(J) information relating to environmental compliance as required to be filed with any local, state, or national environmental authority, subject to any confidentiality provided under the rules of those authorities;

(K) names of public officers of the public power utility and the voting records of those officers for all matters other than those within the scope of a competitive resolution provided for by this section;

(L) a description of the public power utility's central and field organization, including the established places at which the public may obtain information, submit information and requests, or obtain decisions and the identification of employees from whom the public may obtain information, submit information or requests, or obtain decisions; or

(M) information identifying the general course and method by which the public power utility's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.

(b) 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.

(c) In connection with any request for an opinion of the attorney general under Section 552.301 with respect to information alleged to fall under this exception, in rendering a written opinion under Section 552.306 the attorney general shall find the requested information to be outside the scope of this exception only if the attorney general determines, based on the information provided in connection with the request:

(1) that the public power utility governing body has failed to act in good faith in making the determination that the issue, matter, or activity in question is a competitive matter; or

(2) that the information or records sought to be withheld are not reasonably related to a competitive matter.

This provision of the Government Code excepts from public disclosure information reasonably related to a "competitive matter" as that term is determined by the vote of a public power utility governing body acting in good faith. The governing body in this instance is the Bryan City Council. You have provided this office a copy of Resolution 2639, in which the council determined that certain categories of information are "competitive matters" as contemplated by section 552.131 of the Government Code.

Regarding the request concerning BTU customers, you assert that Exhibit F is a representative sample of a document responsive to items 4 and 5. You claim that the document is excepted from public disclosure under section 552.131. However, you do not sufficiently establish why section 552.131 would apply and would allow such information to be withheld from disclosure. Specifically, you do not explain how Exhibit F is "reasonably related to a competitive matter" under section 552.131(b). Because you did not adequately address why section 552.131 of the Government Code excepts Exhibit F from public disclosure, you must release it to the requestor.

You also assert that the documents in Exhibit G are related to "competitive matters" pursuant to section 1(E)(1) of the city council resolution. We believe the information in Exhibit G is reasonably related to this category of information.<sup>2</sup> Therefore, the information in Exhibit G may be withheld under section 552.131 of the Government Code.

Regarding the request concerning contractor pricing information, you assert that Exhibit H is a representative sample of a document responsive to the request. You claim that the document is excepted from public disclosure under section 552.131. We note that Exhibit H is information that was prepared after the city received the request concerning contractor pricing information. A governmental body need not treat a request for information as embracing information prepared after the request has been submitted to it. *See* Open Records Decision No. 452 (1986). Therefore, you may withhold Exhibit H from disclosure.

You also assert that documents in Exhibit I are related to "competitive matters" pursuant to sections 1(B)(5) and 1(C)(3) of the city council resolution. We find that the information in Exhibit I is reasonably related to the categories of information delineated in sections 1(B)(5) and 1(C)(3) of the resolution. Therefore, the information in Exhibit I may be withheld from public disclosure under section 552.131 of the Government Code. In light of our conclusion under section 552.131 of the Government Code, we need not address your other claims regarding sections 552.104 and 552.110.

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<sup>2</sup> However, we note that the information in Exhibit G is not representative of all parts of items 6 or item 8 of the request dated November 14, 2000. Therefore, to the extent that you have not submitted information that is representative of items 6 or 8, you must provide the requestor with the information responsive to those parts of the requests. *See* Gov't Code § 552.301(e)(1)(D).

In summary, you must release Exhibit F since you have not adequately established why section 552.131 would allow such information to be withheld from public disclosure. You may withhold all documents in Exhibit G from disclosure as they are reasonably related to “competitive matters” within the scope of section 1(E)(1) of the city council resolution. You may withhold Exhibit H, since it was prepared after the second request for information was submitted to your office. Finally, you may withhold all documents in Exhibit I from disclosure as they are reasonably related to “competitive matters” within the scope of sections 1(B)(5) and 1(C)(3) of the city council resolution.

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).

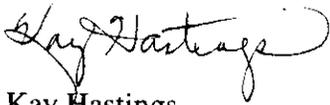
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/RJB/seg

Ref: ID# 144130

Encl. Submitted documents

cc: Mr. G.W. McKinzie  
The Air Conditioning Store  
2306 Sandy Lane  
Bryan, Texas 77801-1517  
(w/o enclosures)