



November 30, 2001

Mr. Carl J. Shahady  
Tiemann, Shahady & Blackman, PC  
P.O. Box 1190  
Pflugerville, Texas 78691-1190

OR2001-5572

Dear Mr. Shahady:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155471.

The Texas Municipal Power Agency (the "TMPA"), which you represent, received a request for copies of a variety of information relating to a specified TMPA Board of Directors' annual meeting. You state that you have released to the requestor all requested information that you believe to be subject to disclosure. You claim, however, that some portions of the requested information are excepted from disclosure pursuant to sections 552.101, 552.106, and 552.133 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that a copy of a responsive certified agenda of a closed session of the specified annual meeting is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.<sup>1</sup> We agree. Section 551.104(c) provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). Such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Therefore, to the extent that TMPA maintains this certified agenda, it must be withheld from

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

You also claim that the submitted information is excepted from disclosure pursuant to section 552.133 of the Government Code.<sup>2</sup> Section 552.133 of the Government Code excepts from disclosure information held by a public power utility that is related to a competitive matter. *See* Gov't Code § 552.133(b). Section 552.133(a)(3) defines "competitive matter" as a matter that the public power utility governing body determines by a vote in good faith to be related to the public power utility's competitive activity and which, if disclosed, would give advantage to competitors or prospective competitors. *See id.* § 552.133(a)(3). However, section 552.133(a)(3) also provides that thirteen categories of information may not be deemed to be competitive matters. *See* Gov't Code § 552.133(a)(3). The attorney general may conclude that section 552.133 is inapplicable to requested information only if, based on the information provided, he determines that 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. *See id.* § 552.133(c). Furthermore, section 552.133(b) provides:

Information or records are excepted from [required public disclosure] 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 § 552.133(b).

We find that the submitted copy of "Resolution No. 2001-9-3" constitutes a resolution of the TMPA governing body determining which additional issues, activities, or other matters constitute competitive matters. We also find that we have no evidence to conclude that

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<sup>2</sup>The Seventy-seventh Legislature renumbered former section 552.131 of the Government Code, "Exception: Public Power Utility Competitive Matters," as section 552.133 of the Government Code. The revision was non-substantive. *See* Act of May 22, 2001, 77<sup>th</sup> Leg., R.S., H.B. 2812, § 21.001(52) (to be codified at Gov't Code § 552.133). Accordingly, we address your section 552.131 claim under section 552.133 of the Government Code.

TMPA failed to act in good faith in adopting this resolution and that the additional adopted competitive matters in that resolution are not clearly among the list of thirteen categories of information that are expressly excluded from the definition of "competitive matter" in section 552.133(a)(3). Accordingly, we conclude that the submitted copy of "Resolution 2001-9-3" is excepted from disclosure pursuant to section 552.133. You state that the submitted copies of the three tabled resolutions which are also responsive to the request reasonably relate to some of the "competitive matters" that have been adopted in good faith by the TMPA governing body. Based on our review of your arguments and these three tabled resolutions, we agree. Accordingly, we also conclude that TMPA must withhold from disclosure the three submitted copies of the resolutions that were tabled by TMPA's governing body pursuant to section 552.133 of the Government Code.

In summary, TMPA must withhold from disclosure the responsive certified agenda to the extent that it exists pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. TMPA must also withhold all of the submitted information from disclosure pursuant to section 552.133 of the Government Code.

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).

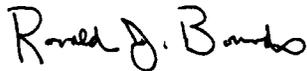
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 155471

Enc. Submitted documents

cc: Mr. Reuben Avelar  
President  
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P.O. Box 472456  
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(w/o enclosures)