



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 10, 2003

Mr. Matthew L. Wade
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2003-0224

Dear Mr. Wade:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174839.

The City of Lubbock (the "city") received a request for balance sheet, operating statement, and other information relating to the West Texas Municipal Power Agency ("WTMPA"). The city has submitted a representative sample of responsive information. The city claims no exception to the disclosure of the submitted information. Instead, the city notified WTMPA of this request. WTMPA has submitted a brief in which it claims that the submitted information is excepted from disclosure under section 552.133 of the Government Code. We have considered WTMPA's arguments and have reviewed the submitted information.¹ We assume that the city has released any other responsive information that existed on the date of its receipt of this request for information. If not, then the city must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the city to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Section 552.133 of the Government Code excepts from public 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 defines "competitive matter" as a matter that the public power utility governing body in good faith determines by vote to be related to the public

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

power utility's competitive activity. *Id.* § 552.133(a)(3). The governing body also must determine, in like manner, that the release of the information would give an advantage to competitors or prospective competitors. *Id.* Section 552.133(a)(3) lists thirteen categories of information that may not be deemed to be competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the information at issue only if, based on the information provided, the attorney general 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. *Id.* § 552.133(c). Furthermore, section 552.133(b) provides as follows:

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).

WTMPA informs us that it is a public power utility for purposes of section 552.133.² WTMPA also has submitted a copy of a resolution, delineating categories of information that have been determined by WTMPA to be competitive matters for purposes of section 552.133. WTMPA asserts that the submitted information comes within the scope of its resolution and therefore is protected from public disclosure under section 552.133. We find, however, that some of the submitted information consists of "aggregate information reflecting receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements[.]" Gov't Code § 552.133(a)(3)(E). We have marked that information. The marked information may not be deemed to be related to a competitive matter, and thus may not be withheld from disclosure, under section 552.133. *See id.* § 552.133(a), (c). As WTMPA raises no other exception to the disclosure of the marked information, it must be released. Otherwise, we find that the remaining submitted information is not clearly among the types of information that section 552.133 expressly

²The city explains that WTMPA is a municipal corporation formed under chapter 163 of the Utilities Code and that the city is a member of WTMPA. *See* Util. Code § 163.054. WTMPA states that the city is in possession of the submitted information under the law creating WTMPA and agreements between the city and WTMPA.

excludes from the definition of competitive matter. Furthermore, we have no evidence that WTMPA failed to act in good faith in adopting its resolution under section 552.133. Therefore, based on WTMPA's representations and its resolution, we conclude that the remaining information is excepted from disclosure under 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).

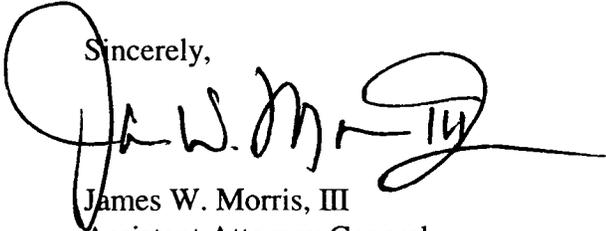
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 174839

Enc: Marked documents

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