



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2003

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2003-8538

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191820.

The City of Lubbock (the "city") received a request for six categories of information. You have not presented arguments or responsive information with regard to five of the categories. To the extent information responsive to those categories exists, we presume you have released it. If you have not, you must do so at this time. *See* Gov't Code §§ 552.301, .302. However, you claim that information responsive to the third category, relating to the advertisement of the city's public utility service, is excepted from disclosure under sections 552.101, 552.104, and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 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.

You inform us that on October 14, 1999, the city council, as governing body of a public power utility, adopted Resolution No. 6559 pursuant to the statutory predecessor to section 552.133, and that the resolution defines competitive matters for the purpose of protecting the competitive position of the city's municipally owned electric utility. You contend that the requested information relates to a competitive matter as defined by the resolution because it reveals the advertising strategies of the utility, and therefore is excepted from disclosure.

The information at issue is not clearly among the thirteen categories of information that are expressly excluded from the definition of competitive matter. Furthermore, we have no evidence that the city failed to act in good faith in adopting Resolution 6559. *See* Gov't Code § 552.133(a)(3), (c). Therefore, based on your representations, the resolution, and our review of the requested information, we agree that the requested information is excepted from disclosure under section 552.133 of the Government Code and therefore must be withheld from the requestor. As we are able to make this determination, we need not address your remaining arguments.

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 Dep't of Pub. 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 191820

Enc: Submitted documents

c: Ms. Ysabel Luna
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(w/o enclosures)