



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 30, 2004

Mr. R. Gaines Griffin  
Davidson & Troilo  
7550 West IH-10, Suite 800  
San Antonio, Texas 78229-5815

OR2004-6425

Dear Mr. Griffin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206170.

The Brownsville Public Utilities Board (the "board"), which you represent, received a request for (1) minutes for all board meetings held since April 1, 2004; (2) audited or unaudited financial information for the last two fiscal years; (3) information relating to the future electricity needs of the board and/or electricity needs for use within the boundaries of the City of Brownsville and/or for the board's customers; (4) information relating to the purchase of an interest in a particular generation facility; (5) a list of all current outstanding revenue bonds payable from revenues of utility systems under the board's operation or control; (6) the board's current 2004 budget; and (7) correspondence since January 1, 2003 between the board and the Oklahoma Municipal Power Authority. You inform us that some of the requested information will be released. You claim that the rest of the requested information is excepted from disclosure under sections 552.101, 552.104, 552.107, and 552.133 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

We first note that some of the submitted information does not appear to have been in existence when the board received the present request for information. The Public Information Act (the "Act"), chapter 552 of the Government Code, does not require a

---

<sup>1</sup>This 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 board to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

governmental body to release information that did not exist when it received a request, create responsive information, or comply with a standing request to provide information on a periodic basis. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 476 at 1 (1987), 452 at 3 (1986), 362 at 2 (1983). The board need not release the submitted information that did not exist when it received this request, and this decision does not address the public availability of that information.

Next, we address your representations with regard to the requested minutes of board meetings. You state that the minutes of board meetings held in open session will be released. You assert that minutes of executive sessions are made confidential by law and will be withheld. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that another statute makes confidential. Section 551.104(c) of the Government Code 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).*” *Id.* § 551.104(c) (emphasis added.). Thus, such information cannot be released to a member of the public in response to an open records request. *See also* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information from disclosure under statutory predecessor to Gov’t Code § 552.101). We therefore agree that the minutes of executive sessions are confidential and must be withheld from disclosure under sections 552.101 and 551.104(c) of the Government Code.

You claim that the submitted information is excepted from disclosure under section 552.133. This section excepts information held by a public power utility that is related to a competitive matter. *See* Gov’t Code § 552.133(b). “Competitive matter” is defined as a matter that the public power utility governing body in good faith determines by vote to be related to the 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.

*Id.* § 552.133(b). You inform us that the submitted information comes within the categories of information that the board has determined by resolution to be competitive matters, the disclosure of which would give an advantage to competitors or prospective competitors. You have submitted a copy of the board's resolution. We note that the submitted information is not clearly among the thirteen categories of information that section 552.133 expressly excludes from the definition of competitive matter. *See id.* § 552.133(a)(3). Furthermore, based on the information provided in connection with this request, we cannot conclude that the board failed to act in good faith. *See id.* § 552.133(c). Therefore, based on your representations, the board's resolution, and our review of the information at issue, we conclude that the board must withhold the submitted information under section 552.133.

In summary: (1) the board must withhold the minutes of executive sessions under section 552.101 in conjunction with section 551.104(c) of the Government Code; and (2) the board must withhold the submitted information under section 552.133. As we are able to make these determinations, we need not address your other arguments against disclosure.

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

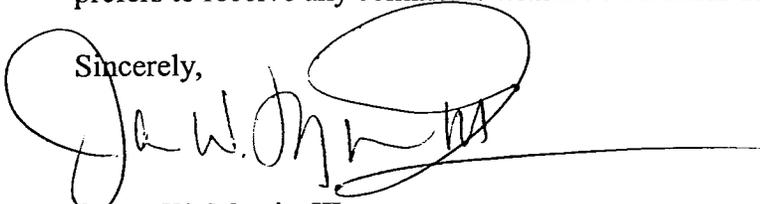
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 206170

Enc: Submitted documents

c: Mr. John L. Wilson  
McGinnis, Lochridge & Kilgore, L.L.P.  
919 Congress Avenue, Suite 1300  
Austin, Texas 78701  
(w/o enclosures)