



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2005

Mr. Robert W. Burger
City Administrator
City of Moulton
P.O. Box 369
Moulton, Texas 77975

OR2005-10470

Dear Mr. Burger:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 236685.

The City of Moulton (the "city") received a request for (1) the phone number of a "T.M.H.", (2) the city constitution, (3) copies of the city's budget and expenditures from the date that a named individual was hired by the city, (4) an explanation of where city revenues come from, and (5) contracts made between the city and the Lower Colorado River Authority (the "LCRA"). You state, and provide documentation showing, that you notified LCRA of the city's receipt of the request for information and of LCRA's right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). You take no position as to whether the submitted information is excepted under the Act; however, the LCRA asserts that the submitted information is excepted under sections 552.104, 552.110, and 552.133 of the Government Code. We have reviewed the submitted arguments and the submitted documents.¹

¹The LCRA informs us that it is releasing responsive information to the requestor.

Initially, we note that the requestor has asked the department to answer a question and explain where city revenues come from. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

We next note that the city did not submit the requested phone number, constitution, or budget and expenditure information. We assume that, to the extent this requested information existed when the city received the request for information, you have released it to the requestor. If not, then you must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

The submitted information is also subject to section 552.022 of the Government Code. Under section 552.022(a)(3), information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is expressly public unless it is expressly confidential under other law. But section 552.022 does not apply to information that is subject to section 552.104 or 552.133 of the Government Code. *See* Gov't Code §§ 552.104(b), 552.133(d). Section 552.110 also consists of "other law" for purposes of section 552.022. Accordingly, we will address whether the city must withhold the submitted information under section 552.104, 552.110, or 552.133.

The LCRA asserts that the submitted contracts are excepted under section 552.133 of the Government Code, which excepts from disclosure a public power utility's information related to a competitive matter. Section 552.133(b) provides as follows:

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.

Gov't Code § 552.133(b). A "competitive matter" is defined as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity, and the release of which would give an advantage to

competitors or prospective competitors. *Id.* § 552.133(a)(3). Section 552.133(a)(3) lists thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the requested information only if, based on the information provided, the attorney general determines 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).

The LCRA informs us that it is a public power utility for purposes of section 552.133. The LCRA also has submitted a copy of a resolution, delineating categories of information that have been determined by the LCRA to be competitive matters for purposes of section 552.133. The LCRA asserts that the submitted information comes within the scope of its resolution and therefore is protected from public disclosure under section 552.133. After review of the LCRA's arguments and the submitted information, we find that the information relating to the generation of power in the submitted records is not clearly among the types of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. Furthermore, we have no evidence that the LCRA failed to act in good faith in adopting its resolution under section 552.133. Therefore, based on the LCRA's representations and its resolution, we conclude that the submitted information is excepted from disclosure under section 552.133 of the Government Code.²

To conclude, the city must release the requested phone number, constitution, or budget and expenditure information, to the extent such documents exist. It must withhold the submitted information under section 552.133.

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).

²Because we are able to resolve this under section 552.133, we do not address the remaining argument for exception of this information.

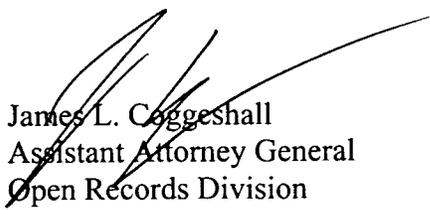
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jpa

Ref: ID# 236685

Enc. Submitted documents

c: Ms. Linda L. Barta
P.O. Box 424
Moulton, Texas 77975
(w/o enclosures)