



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2006

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2006-04013

Dear Mr. Ramirez:

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# 246958.

The Lower Colorado River Authority (the "LCRA") received a request for all bids on the Coal Stackout Equipment Project at the Fayette Power Project in LaGrange, Texas. You state that the requestor subsequently clarified that he sought a particular purchase order and contract, which included two bids for the project. You indicate that Pro Serv Sanders, Inc. an interested third-party, has authorized LCRA to release its bid package to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.133 of the Government Code.¹ You also claim that the remaining requested information may contain proprietary information subject to an exception under the Act, but make no arguments and take no position as to whether the information is so excepted. Pursuant to section 552.305, you state, and provide documentation showing, that you notified interested third party Zachry Construction Corporation of the request and of its right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990)* (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in

¹ Although the LCRA also initially asserted sections 552.103, 552.107, and 552.111 of the Government Code, in subsequent correspondence with our office, the LCRA withdrew these assertions.

certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Under section 552.022(a)(3), all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate, is expressly public unless it is expressly confidential under other law. Gov't Code 552.022(a)(3). Section 552.133(d) provides, however, that "[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under other law does not apply to information that is excepted from required disclosure under [section 552.133]." Accordingly, we will address whether the LCRA must withhold the submitted information under section 552.133.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information related to a competitive matter, and provides in part:

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. Gov't Code § 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. Gov't Code § 552.133(c).

You inform us that the LCRA is a public power utility for purposes of section 552.133. You have also submitted a copy of the LCRA's Board Policy 202, delineating categories of information that have been determined by the LCRA to be competitive matters for purposes of section 552.133. You assert that the submitted information pertaining to purchasing and contract information comes within the scope of Board Policy 202 and therefore is protected from public disclosure under section 552.133. After careful review of your arguments and the submitted information, we find that the submitted information is not among the thirteen categories of information expressly exempted from the definition of competitive matter, and based on the information provided in connection with this request, we cannot conclude that the LCRA failed to act in good faith.

Therefore, based on your representations and the LCRA's Board Policy 202, we conclude that the submitted information is excepted from disclosure under section 552.133 of the Government Code. As our ruling is dispositive, we need not address any remaining 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, 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).

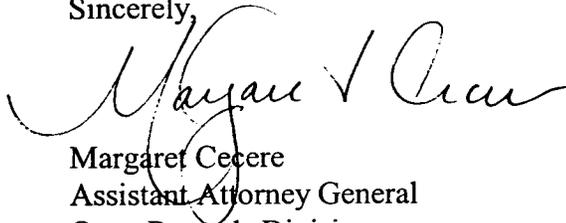
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,



Margaret Cecere
Assistant Attorney General
Open Records Division

MC/sdk

Ref: ID# 246958

Enc. Submitted documents

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