



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 2, 2006

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

OR2006-04449

Dear Mr. Vic 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# 247686.

The Lower Colorado River Authority (the "LCRA") received a request for the winning proposal for LCRA's Renewable and Distributed Generation Technology Assessment RFP, project number 5101, as well as the subsequent contract between the winning supplier and LCRA. You claim that the submitted information is excepted from disclosure under section 552.133 of the Government Code. Additionally, you state that the requested bid proposal may contain proprietary information of Navigant Consulting, Inc. ("Navigant"). Accordingly, you inform us, and provide documentation showing, that you notified Navigant of the request and its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

You state LCRA has submitted for our review "the bid proposal submitted to LCRA by [Navigant] and the resulting contract which are, in essence, the RFP combined with [Navigant's] proposal." Under section 552.022(a)(3) of the Government Code, 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. However, section 552.022 does not apply to information that is subject to section 552.133 of the Government Code. *See* Gov't Code § 552.133(d). Accordingly, we will address whether the submitted information may be withheld 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. Section 552.133(b) provides:

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).

LCRA informs us that it is a public power utility for purposes of section 552.133. LCRA also has submitted a copy of a resolution delineating categories of information that have been determined by LCRA to be competitive matters for purposes of section 552.133. Based on our review of your arguments and the resolution, we find that the submitted information relates to a competitive matter as defined under the resolution. In addition, we have no evidence to conclude that LCRA failed to act in good faith in adopting this resolution, and the adopted competitive matter in that resolution does not clearly fall within any of the thirteen categories of information made public by section 552.133(a). Therefore, based on LCRA's representations and its resolution, we conclude that the submitted information is excepted from disclosure under section 552.133 of the Government Code and may be withheld from the requestor on this basis.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 247686

Enc. Submitted documents

c: FOIA Request Coordinator
Onvia
1260 Mercer Street
Seattle, Washington 98109
(w/o enclosures)

Ms. Lara Doll
Navigant Consulting, Inc.
8310 Capital of Texas Hwy. North, Suite 3853
Austin, Texas 78731
(w/o enclosures)