



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2006

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P. O. Box 469002
Garland, Texas 75046-9002

OR2006-06232

Dear Mr. Mann:

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# 250301.

The City of Garland (the "city") received a request for a list of all city employees, including name, department, title, date of birth, salary information, and hire date. You state that the city has released all of the requested information with the exception of Electric Department employee information. You claim that this remaining requested information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.133 of the Government Code excepts from required public disclosure 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).

You inform us that the city owns and operates its own electric utility and that the city council is the utility's governing body for purposes of section 552.133. You further explain that on July 18, 2000, the city council approved Resolution No. 8383, declaring certain information, including "personnel staffing levels and compensation," to be competitive for purposes of section 552.133. You have submitted a copy of the resolution in requesting this decision. The city asserts that "personnel staffing levels" refers to the number and composition of employees, including the number of staff employed and the ratio of supervisors to regular employees. The submitted information contains the following types of information regarding city employees: department name, employee's name, assignment title, hire date, birth date, and wage rate. You argue that the portion of information you have highlighted in red regarding the city's Electric Department reveals the number and composition of employees as well as their compensation, and that this is competitive information for purposes of section 552.133. Based on these representations and our review, we agree that the information highlighted in red reveals personnel staffing levels and compensation, and thus is a competitive matter for purposes of section 552.133. Furthermore, this information is not among the thirteen categories of information expressly exempted from the definition of competitive matter under section 552.133(a)(3). Based on your representations, we cannot conclude that the city council failed to act in good faith. Consequently, we agree that the red highlighted information relates to a competitive matter in accordance with the city's resolution and, therefore, is excepted from disclosure pursuant to section 552.133 of the Government Code.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 250301

Enc. Submitted documents

c: Ms. Molly Motley Blythe
Research Librarian
The Dallas Morning News
P. O. Box 655237
Dallas, Texas 75265
(w/o enclosures)