



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2006

Mr. Michael S. Copeland
Utility Attorney
Utility Administration
City of Denton
215 East McKinney
Denton, Texas 76201

OR2006-11432

Dear Mr. Copeland:

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# 260992.

The City of Denton (the "city") received a request for "[t]he resolution(s) and/or [o]rdinance(s) authorizing the sale of what is known as the Spencer Generating Station," the sales contract, and a list of inventory and real property included in the sale, as well as the relevant city council minutes if the sale is contingent upon a decision by the Public Utilities Board. You state that you will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You state that the certified agendas for closed meetings on May 29, 2001 and June 4, 2001 are confidential under section 551.104(c) of the Government Code, which 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). Such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). You state that you have not been presented with a court order that directs the disclosure of the certified agendas that are

responsive to this request for information. Thus, we agree that the certified agendas must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

You claim that the remaining information is excepted from public disclosure 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).

You inform us that the city owns and operates the electric utility, and is therefore a public power utility for the purposes of section 552.133. You also inform us that the city council, which is the governing body of the public power utility, adopted a resolution pursuant to section 552.133 in which it defined certain information to be within the scope of the term "competitive matter." You have provided us with a copy of the resolution. You have demonstrated that the remaining 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 city council failed to act in good faith. Furthermore, we conclude that this information is reasonably related to a competitive matter as defined by the resolution at issue. Consequently, we agree that the remaining information is a competitive matter in accordance

with the city's resolution. Accordingly, the city must withhold the remaining information under section 552.133 of the Government Code.

In summary, the certified agendas must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. Additionally, the city must withhold the remaining submitted information under 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).

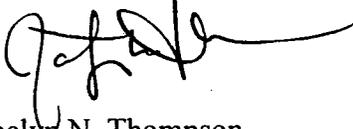
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/dh

Ref: ID# 260992

Enc. Submitted documents

c: Mr. Bob Clifton
730 Wainwright
Denton, Texas 76201
(w/o enclosures)