



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 5, 2008

Ms. Catherine Zellers  
City Attorney's Office  
City of Weatherford  
P.O. Box 255  
Weatherford, Texas 76086

OR2008-12254

Dear Ms. Zellers:

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# 323194.

The City of Weatherford (the "city") received two requests for a copy of a contract to purchase electric power for the city.<sup>1</sup> You claim that the requested contract is excepted from disclosure under section 552.133 of the Government Code.<sup>2</sup> AEP Energy Partners, Inc., an interested third party, asserts in correspondence to this office that its information is excepted under sections 552.110 and 552.133 of the Government Code. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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). We have considered the submitted arguments and reviewed the submitted information. We have also considered comments submitted by one of the requestors. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>One of the requestors also asked for information pertaining to speed bumps for a specified development, which you inform us was released.

<sup>2</sup>Although the city asserts that some of the information is excepted from disclosure under section 552.133 in conjunction with section 552.101 of the Government Code, we note that the exceptions in the Act are not law that makes information confidential for purposes of section 552.101.

Initially, we note that you seek to withhold a copy of resolution 2000-111, which was adopted by the Weatherford Municipal Utility Board of Trustees (the "board"), under the Act; however, neither requestor asked for this information. Accordingly, Exhibit C, which contains this resolution, is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request.

You assert that the submitted contract is 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).

You inform us that the city owns and operates a municipal electric utility system that is a public power utility for purposes of section 552.133, and that the board is the utility's governing body for purposes of section 552.133. You submitted a copy of a resolution 2000-11, which delineates categories of information that the board has determined to be competitive matters for purposes of section 552.133. You assert that the submitted contract comes within the scope of this resolution and, therefore, is protected from public disclosure under section 552.133. After reviewing the city's arguments and the submitted

information, we conclude that the submitted contract is reasonably related to a competitive matter. The contract is also 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 failed to act in good faith. Consequently, we agree that the submitted contract is related to a competitive matter in accordance with the city's resolution and, therefore, is excepted from disclosure pursuant to section 552.133.<sup>3</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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

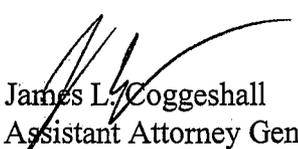
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<sup>3</sup>As our ruling is dispositive, we do not address AEP's arguments to withhold this information.

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/ma

Ref: ID# 323194

Enc. Submitted documents

c: Ms. Joan Stokes  
202 East Josephine Street  
Weatherford, Texas 76086  
(w/o enclosures)

Mr. Bill Moylan  
206 East Rentz Street  
Weatherford, Texas 76086-6221  
(w/o enclosures)