



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2008

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

OR2008-14238

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# 325143.

The City of Weatherford (the "city") received a request for information related to a specified request for proposal ("RFP") and information related to the city's electricity funding and usage. You state the city has released some information to the requestor and claim that the city does not have information in response to some of the request.¹ You assert the submitted information is excepted from disclosure under section 552.133 of the Government Code.² You have also notified Constellation Power Source, Integrys Energy Services, Inc., American Energy Partners ("AEP"), Calpine Central, L.P. ("Capline"), Morgan Stanley Capital Group, Inc., LCRA, FPL Energy Origination, Garland Power & Light ("Garland"), NRG Power Marketing, Inc., Bryan Texas Utilities, and TXU Portfolio Management Company, L.P. of the request and of each company's opportunity to submit comments to this office. *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*

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²Although the city asserts the submitted 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.

to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from AEP, Calpine, and Garland. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address the city's argument that a portion of the request requires the city to answer questions. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We therefore assume the city has made a good faith effort to locate any information that would be responsive to the requestor's inquiries in the present request.

We next note that you seek to withhold a copy of resolution 2000-11, which was adopted by the Weatherford Municipal Utility Board of Trustees (the "board"), as well as the proposals submitted in response to the specified RFP. The requestor, however, did not request this information. Accordingly, Exhibits B through P are not responsive to the request. 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.

We address your argument under section 552.133 of the Government Code for the submitted responsive information. Section 552.133 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 responsive information 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 information at issue, we conclude the submitted responsive information is reasonably related to competitive matters. The submitted responsive information 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 responsive information is related to competitive matters in accordance with the city's resolution and, therefore, is excepted from disclosure pursuant to section 552.133 of the Government Code.³

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

³As our ruling is dispositive, we do not address AEP's, Calpine's, or Garland's arguments to withhold this information.

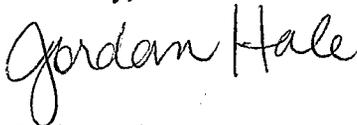
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 325143

Enc. Submitted documents

c: Mr. Frank Williford
470 Ridgecrest Drive
Weatherford, Texas 76088
(w/o enclosures)

Constellation Power Source
500 Dallas Street, Suite 3300
Houston, Texas 77002
(w/o enclosures)

Integrus Energy Services, Inc.
1716 Lawrence Drive
DePere, Wisconsin 54115
(w/o enclosures)

Calpine Central, L.P.
717 Texas, Suite 100
Houston, Texas 77002-2743
(w/o enclosures)

Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220
(w/o enclosures)

Garland Power & Light
525 East Avenue B
Garland, Texas 75040
(w/o enclosures)

Bryan Texas Utilities
P.O. Box 1000
Bryan, Texas 77805
(w/o enclosures)

AEP Energy Partners
155 West NationWide Boulevard, Suite 500
Columbus, Ohio 42315
(w/o enclosures)

Morgan Stanley Capitol Group, Inc.
2000 Westchester Avenue
Purchase, New York 10577
(w/o enclosures)

FPL Energy Origination
1000 Louisiana Street, Suite 6900
Houston, Texas 77002
(w/o enclosures)

NRG Power Marketing, Inc.
1301 McKinney, Suite 2300
Houston, Texas 77010
(w/o enclosures)

TXU Portfolio Management Company, L.P.
Luminant
1601 Bryan
Dallas, Texas 75201
(w/o enclosures)