



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2009

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

OR2009-03720

Dear Mr. 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# 339255.

The Lower Colorado River Authority ("LCRA") received a request for: (1) "the wholesale tariff or rate that LCRA is using to determine the City of San Saba power costs," and (2) "the City of San Saba PCRFB cost for each month of 2008." You claim that the submitted information is excepted from disclosure under section 552.133 of the Government Code. You also explain that the submitted information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified the City of San Saba (the "city") of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). As of the date of this ruling, we have not received any comments from the city. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information responsive to item (2) from the request. You have not raised any arguments against disclosure of this information and, because you have not submitted any information for our review, we have no basis to determine that any of this information is confidential. Therefore, to the extent that LCRA maintained any documents responsive to this item on the date LCRA received the request, LCRA must release such information to the requestor. *See* Gov't Code § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, then it must release information as soon as possible).

We next address your argument against disclosure of the submitted information, which is responsive to item (1) from the request. 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 [disclosure] 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 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.

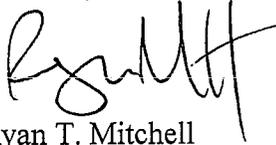
Gov't Code § 552.133(b). A "competitive matter" is defined as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity, and the release of which would give an advantage to competitors or prospective competitors. *See id.* § 552.133(a)(3). However, section 552.133(a)(3) lists thirteen categories of information that may not be deemed competitive matters. *See id.* 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 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. *See id.* § 552.133(c).

You inform us that LCRA is the governing body of a public power utility. You have also submitted a copy of the LCRA Board's Policy 103 and Policy 202, which delineate categories of information that the Board has, by vote, we understand, determined to be competitive matters for purposes of section 552.133. You assert that the submitted information falls within the categories of LCRA's competitive matters and therefore is protected from public disclosure under section 552.133. We have no reason to conclude that LCRA failed to act in good faith in determining this particular matter to be competitive. Furthermore, we conclude that this information is reasonably related to a competitive matter as defined by LCRA's competitive matters policy and the submitted information is not among the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. *See id.* § 552.133(a)(3). Therefore, based on your representations and our review, we conclude that the submitted information is excepted from disclosure by section 552.133 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 339255

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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