



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 21, 2009

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

OR2009-14927

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# 358842 (GCA 09-0588).

The City of Garland (the "city") received a request for four categories of information related to city employee bonuses, a specified project and a specified mitigation fund. You state that the city has released most of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the information you have marked 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.

Id. § 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 is a home-rule municipality that owns and operates its own electric utility, and the city council is the utility’s governing body for purposes of section 552.133. You further explain, and provide documentation showing, that on July 20, 2004, the city council approved Resolution No. 9160, in which the city council defined business operations information, including personnel staffing levels and compensation, to be within the scope of the term “competitive matter” for the purposes of section 552.133. The information at issue is not among the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. Furthermore, we have no evidence that the city failed to act in good faith. *See id.* § 552.133(c). Consequently, we determine that the information at issue relates to a competitive matter in accordance with the city council’s resolution you have provided and is, therefore, excepted from disclosure pursuant to section 552.133 of the Government Code. As you raise no further exceptions, the remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara Wilcox". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 358842

Enc. Submitted documents

c: Requestor
(w/o enclosures)