



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2010

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

OR2010-08341

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# 382079.

The Lower Colorado River Authority (the "authority") received a request for "the Wholesale Power Agreement between the City of San Marcos [(the "city")] and the [authority.]" You claim the submitted information is excepted from disclosure under sections 552.104, 552.111, and 552.133 of the Government Code. You have also notified the city of the request and of its opportunity to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

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 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). Section 552.133(a)(3) defines a “competitive matter” 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) also provides 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 indicate, and the submitted information reflects, the authority operates a public power utility for purposes of section 552.133. You further inform us, and provide documentation showing, the authority’s board adopted a resolution that defines contract information to be within the scope of the term “competitive matter.” The submitted contract is not among the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of a competitive matter. Furthermore, we have no evidence the authority’s board failed to act in good faith. *See id.* § 552.133(c). Accordingly, we determine the submitted contract relates to a competitive matter in accordance with the authority’s board’s resolution you have provided and is excepted from disclosure pursuant to section 552.133 of the Government Code.¹

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 'M Entsminger', written over a vertical dotted line.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/eeg

Ref: ID# 382079

Enc. Submitted documents

c: Requestor
(w/o enclosures)