



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2010

Mr. Adam C. Falco
Senior Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2010-13681

Dear Mr. Falco:

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# 393300.

The City of College Station (the "city") received a request for the amount a specified business owes the city for utility bills, including late fees. You claim that the submitted information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception 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.

Gov't Code § 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 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 the issue, matter, or activity is a competitive matter or the information requested is not reasonably related to a competitive matter. *Id.* § 552.133(c).

You inform us that the city provides utility services and is, therefore, a public power utility for the purposes of section 552.133. You state that the city council is the utility's governing body. You inform us that the city council passed resolution 9-27-2007-2p by vote pursuant to section 552.133 and the resolution declares certain types of information, including customer lists or identification data, consumption data, or rate/billing/account data, to be competitive matters, the disclosure of which would give advantage to competitors or potential competitors. We note that the submitted information is not clearly among the thirteen categories of information that section 552.133 expressly excludes from the definition of competitive matter. *See id.* § 552.133(a)(3). Furthermore, based on the information provided in connection with this request, we cannot conclude that the city failed to act in good faith. *See id.* § 552.133(c). Therefore, based on your representations and our review, we conclude that the city must withhold the submitted information under 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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eb

Ref: ID# 393300

Enc. Submitted documents

c: Requestor
(w/o enclosures)