



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 18, 2011

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

OR2011-00827

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# 406183 (GCA 10-0817).

The City of Garland (the "city") received a request for information from 2009 to the date of the request relating to payments by the city to organizations or dues for city council appointees; any membership fees or dues paid by the city for any city council appointees; the cell phone records of all appointees; P card billings paid by the city for appointees; billings paid for any attorney employed by the city and the assistant to the city manager for a specified amount of time; all e-mail sent by city appointees from a specified date; and all salary amounts for any city employee making more than \$100,000 annually. 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.

Initially, you inform us the city sought clarification of the first six categories of the request for information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You state the city has not received clarification of the portions of the request at issue. Thus, for the portions of the request for information for which you have not received clarification, we find the city is not required to release

information in response to those portions of the request. However, if the requestor clarifies these portions of the request for information, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).

You seek to withhold the job titles, department, and salaries of the city Electric Department employees, which you have marked, under section 552.133 of the Government Code. Section 552.133 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 utility-related 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 inform us that the city is a home-rule municipality that owns and operates its own electric utility, and the Garland City Council (the "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 council, as governing body of the utility, approved Resolution No. 9160, in which the council defined business operations information, including personnel staffing levels and compensation, to be within the scope of the term "competitive matter" for purposes of section 552.133. The information you have marked 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). Thus, we determine the information you have marked relates to a competitive matter in accordance with the council's resolution and must be withheld 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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 406183

Enc. Submitted documents

c: Requestor  
(w/o enclosures)