



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2011

Mr. Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

OR2011-06744

Dear Mr. Martinez:

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# 420221 (PIR # 11.03.23.15).

The Texas Commission on Environmental Quality (the "commission") received a request for all records pertaining to the Fayette Power Project. You state the commission has made some of the requested information available to the requestor. You claim the submitted information may be excepted from disclosure under sections 552.101 and 552.110 of the Government Code, but take no position on the applicability of these exceptions. However, you indicate the release of the information at issue may implicate the interests of the Lower Colorado River Authority (the "LCRA"). You notified the LCRA of this request for information and of its right to submit arguments to this office explaining why its information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments from the LCRA. We have considered the submitted arguments and reviewed the submitted information.

The LCRA argues the submitted information is excepted from disclosure 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:

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 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).

The LCRA states it operates a public power utility for purposes of section 552.133. The LCRA further informs us, and provides documentation showing, the LCRA's board adopted a resolution that declares certain information to be within the scope of the term "competitive matter." The LCRA asserts the submitted information comes within the scope of this definition. The information at issue 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 LCRA's board failed to act in good faith. *See id.* § 552.133(c). Accordingly, we determine the submitted information relates to a competitive matter in accordance with the LCRA's board's resolution and is excepted from disclosure pursuant to section 552.133 of the Government Code.<sup>1</sup>

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.

---

<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/eb

Ref: ID# 420221

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

Mr. Jay Janca  
Lower Colorado River Authority  
6549 Power Plant Road  
La Grange, Texas 78945-3714  
(w/o enclosures)

Mr. Vic Ramirez  
Associate General Counsel  
Lower Colorado River Authority  
P. O. Box 220  
Austin, Texas 78767-0220  
(w/o enclosures)