



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2011

Ms. Janis K. Hampton  
City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805-1000

OR2011-15702

Dear Ms. Hampton:

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# 434232.

The City of Bryan (the "city") received a request for the dates, amounts, check numbers, payee names, payee addresses, and payee telephone numbers pertaining to all uncashed checks for five hundred dollars or more that were issued by the city or Bryan Texas Utilities ("BTU"), remain outstanding, remain uncashed, and exceed 180 days of age.<sup>1</sup> You state only BTU has any information responsive to the request.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. 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. The Eighty-second Legislature recently amended section 552.133, which now provides, in relevant part:

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<sup>1</sup>You state the city sought and received clarification from the requestor regarding the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(a) In this section, “public power utility” means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, “competitive matter” means a utility-related matter that is related to the public power utility’s competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1613, § 2 (to be codified as an amendment to Gov’t Code § 552.133). Section 552.133(a-1)(2), however, provides fifteen categories of information that are not competitive matters. *Id.*

You state BTU is a public power utility for purposes of section 552.133. Although you generally assert the submitted uncashed check information “is reasonably related to customer billing,” you have not provided any explanation of what the checks pertain to or why the checks were issued. Thus, you have not demonstrated how the submitted information pertains to customer billing. Consequently, we find you have failed to establish the applicability of section 552.133 of the Government Code to the submitted information, and the city may not withhold the submitted information on that basis.

You contend the submitted information is protected under section 552.104 of the Government Code, which excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular

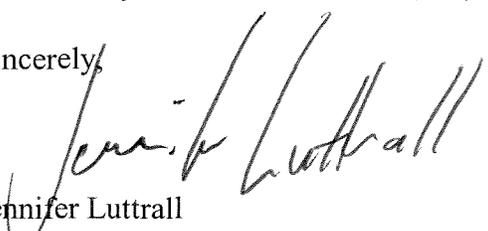
competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You indicate BTU is a competitor in the marketplace for the sale and distribution of electricity. Based on this representation, we find you have established BTU has legitimate marketplace interests in the sale and distribution of electricity for purposes of section 552.104. You generally assert release of the submitted information pertaining to five uncashed checks would “allow competitors to solicit away BTU’s customers.” Beyond this general assertion, you have not provided any arguments explaining how release of the submitted uncashed check information would allow competitors to solicit away BTU’s customers. Therefore, we find you have failed to demonstrate release of the submitted information would cause specific harm to BTU’s marketplace interests. Consequently, the city may not withhold the submitted information under section 552.104 of the Government Code. As you have not claimed any other exceptions to disclosure, the city must release the submitted information.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 434232

Enc. Submitted documents

c: Requestor  
(w/o enclosures)