



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2012

Ms. Maria Angela Flores Beck
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P.O. Box 10
La Grange, Texas 78945-0010

OR2012-00373

Dear Ms. Beck:

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# 442575.

The City of Waelder (the "city"), which you represent, received a request for fifteen categories of information, including wholesale power purchase contracts, invoices related to those contracts, and information relating to the city's determination of electric rates since July 1, 2010. You state the city does not have some of the requested information.¹ You also state the city has released some of the requested information, but claim the submitted information is excepted from disclosure under section 552.133 of the Government Code. We have also considered comments submitted by the Lower Colorado River Authority (the "LCRA"). *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the LCRA has submitted information to this office it asserts is excepted from release under the Act. However, the city did not submit this information for our review. This ruling does not address information beyond what the city has submitted to us for review. *See Gov't Code § 552.301(e)(1)(D)* (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

limited to the information the city submitted as responsive to the request for information. *See id.*

Next, you acknowledge, and we agree, the city failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.133 can provide a compelling reason to overcome this presumption. Therefore, we will address your arguments under this exception.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). As noted above, the Texas Legislature recently amended section 552.133, which now provides in relevant part the following:

(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:

...

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts; [and]

...

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

Id. § 552.133(a)(a-1)(1)(B), (C), (F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.*

You state the city has contracted with the LCRA for electric power distributed through a system owned by the city, and the LCRA states it is a public power utility for purposes of section 552.133. You inform us the submitted information pertains to a “fuel and purchased power agreement with the [LCRA] and [LCRA] customer billing, contract and usage information or electric power pricing information, respectively.” The LCRA objects to the release of the information at issue under section 552.133 because it “would be at a significant competitive disadvantage if competitors could discern exactly what price they need to beat and any additional information they could use to impact LCRA’s competitive stance in the wholesale power market.” The information at issue is not among the fifteen categories of information expressly excluded from the definition of “competitive matter” by section 552.133(a-1)(2). Based on our review of your arguments and the submitted information, we find the submitted information relates to a competitive matter as defined under section 552.133(a-1). Thus, we conclude the city must withhold the submitted information from disclosure 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 442575

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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