



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 12, 2012

Mr. Vic Ramirez  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR2012-14493

Dear Mr. Ramirez:

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# 465230.

The Lower Colorado River Authority (the "LCRA") received requests from six requestors for information related to issues regarding the requestors' wholesale power agreements with the LCRA. You claim the requested information is excepted from disclosure under sections 552.103, 552.104, 552.107, 552.111, and 552.133 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you submitted.<sup>2</sup>

We first note the present requests for information consist mostly of questions. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request for information under the Act. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body

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<sup>1</sup>Although you also raise section 552.101 of the Government Code, you have submitted no arguments in support of the applicability of that exception. Therefore, this decision does not address section 552.101. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide written comments in support of applicability of each exception it claims).

<sup>2</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the LCRA to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

is not required to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). A governmental body must make a good-faith effort, however, to relate a request to responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). You state the LCRA has done so.

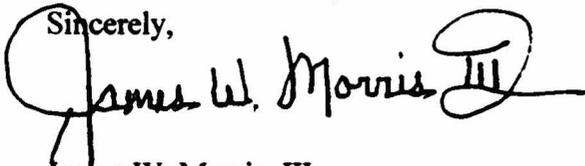
Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has concluded 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 the governmental body can satisfy two criteria. *See id.* First, the governmental body must demonstrate 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 state the LCRA has statutory authority to engage in competition in the electric utility marketplace and to develop, generate, distribute, and sell electric energy. You inform us the LCRA supplies electricity to more than a million residents of 53 counties in central and southeast Texas. You state the LCRA does so through 44 wholesale customers, including 33 cities and 11 electric cooperatives. You explain the submitted information is related to the LCRA's wholesale power services contracts, including their terms, conditions, pricing, billing, customer usage, and revenue. You state this information pertains to the LCRA's role as a competitor in the wholesale power electric utility market. You explain the LCRA's customers have sources other than the LCRA from which to obtain some of their electricity requirements. You contend the release of the submitted information would provide competitors with an unfair advantage by enabling them to determine the prices, terms, and conditions necessary to beat the LCRA's prices, terms, and conditions, would pose a serious threat to the LCRA's electric utility marketplace interests, and would jeopardize the LCRA's competitiveness in the marketplace. Based on your representations, we find you have demonstrated the LCRA has specific marketplace interests. *See* ORD 593 at 3. We also find you have demonstrated a specific threat of actual or potential harm to the LCRA's interests in a particular competitive situation. We therefore conclude the LCRA may withhold the submitted information under section 552.104 of the Government Code. As we are able to make this determination, we need not address the other exceptions you claim.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bhf

Ref: ID# 465230

Enc: Submitted documents

c: 6 Requestors  
(w/o enclosures)