



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2012

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

OR2012-17052

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# 468722.

The Lower Colorado River Authority (the "LCRA") received a request for information related to a specified lawsuit involving LCRA Transmission Services Corporation and four named individuals.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.²

We first note most of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108

¹You state that although the request is titled "Defendants' First Request for Production of Documents," the LCRA has elected to treat it as a request for information under the Act. See Gov't Code § 552.0055 (subpoena duces tecum or request for discovery issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under the Act).

²This 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).

of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). In this instance, the information at issue includes completed appraisal reports made for the LCRA that are subject to disclosure under section 552.022(a)(1). Although you seek to withhold the submitted information under sections 552.103, 552.105, 552.107(1), and 552.111 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived), 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to Gov't Code § 552.105 subject to waiver), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 could be waived). As such, sections 552.103, 552.105, 552.107(1), and 552.111 do not make information confidential for purposes of section 552.022(a)(1). Therefore, the information in the appraisal reports may not be withheld under sections 552.103, 552.105, 552.107(1), or 552.111. We note the attorney-client and attorney work product privileges, which you claim under sections 552.107(1) and 552.111, also are found at Texas Rule of Evidence 503 and Texas Rule of Civil Procedure, which have been held to make information confidential for purposes of section 552.022(a)(1). *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). You also claim sections 552.101 and section 552.104 of the Government Code. Section 552.101 is a confidentiality provision for purposes of section 552.022(a)(1), and information subject to section 552.022(a)(1) may be withheld under section 552.104(a). *See Gov't Code § 552.104(b)* (information protected by Gov't Code § 552.104 not subject to required public disclosure under Gov't Code § 552.022(a)). Therefore, we will consider whether the appraisal reports are protected by rule 503, rule 192.5, or sections 552.101 or 552.104. We also will consider your claims under sections 552.101, 552.103, 552.104, 552.105, 552.107(1), and 552.111 for the remaining information at issue.

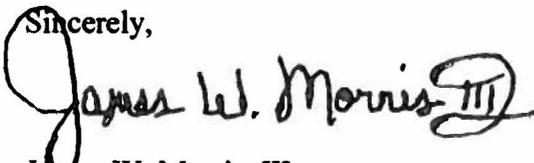
Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding and certain other competitive situations. *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(a) 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 Transmission Services Corporation is in the process of acquiring easements and property rights for a transmission line project. You assert the LCRA has a specific marketplace interest in easements and property rights on and within properties along the route of the transmission line. You contend release of the submitted information would result in specific harm to the LCRA's marketplace interests. You assert the release of the information at issue would provide a competitive advantage to those landowners with which the LCRA is negotiating or plans to negotiate to acquire easements and property rights. Based on your representations and our review, we conclude the LCRA may withhold the submitted information under section 552.104 of the Government Code.³

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_or1.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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 468722

Enc: Submitted documents

c: Requestor
(w/o enclosures)

³As we are able to make this determination, we need not address the other exceptions you claim.