



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2012

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

OR2012-17681

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# 470491.

The Lower Colorado River Authority ("LCRA") received a request for current contracts between LCRA, the City of Austin (the "city"), and Austin Energy relating to a specified power plant. You state some information has been released. You further state release of the requested information may implicate the proprietary interests of the city and Austin Energy. Accordingly, you provide documentation showing you have notified the city and Austin Energy of the request and their rights to submit arguments to this office. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).* You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.133 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments received from the requestor. *See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).*

Initially, we note that in a letter dated October 5, 2012, you inform us that the requestor withdrew a portion of her request. Consequently, you state LCRA no longer seeks an opinion concerning Exhibits C-2, C-3, and C-4 of the submitted information because this

information is not responsive to the narrowed request. This ruling does not address the public availability of the non-responsive information, nor is LCRA required to release non-responsive information in response to this request. Accordingly, we do not address your arguments under sections 552.107 and 552.111 of the Government Code.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." *Id.* § 552.133(b). The Texas Legislature recently amended section 552.133, which now provides in relevant part:

(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:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling; [and]

...

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider[.]

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

You explain LCRA is a public power utility for purposes of section 552.133. You state Exhibit C-1 consists of cost and compensation information, including cost sharing formulas and calculations, relating to emissions reduction improvements at the power plant at issue. You further state Exhibit C-1 contains information pertaining to replacement and repair projects in the near future. You explain release of the information would put LCRA at a competitive disadvantage in the wholesale power utility 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 your assertions, we find Exhibit C-1 relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude LCRA must withhold Exhibit C-1 under section 552.133 of the Government Code.¹

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 470491

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Elaine Nicholson
Assistant City Attorney
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P.O. Box 1088
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(w/o enclosures)

¹Because our ruling is dispositive, we do not address your remaining arguments against disclosure.

Mr. Stuart Reilly
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(w/o enclosures)