



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2012

Ms. Elaine Nicholson
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2012-19825

Dear Ms. Nicholson:

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# 473191.

The City of Austin (the "city") received a request for (1) the names, job title, compensation, and costs associated with a specified category of city employees; (2) three categories of information pertaining to city energy costs; (3) a specified contract; (4) any documents related to certain Austin Energy price estimates, projections, or contract prices during a specified period of time; and (5) the cost allocation plans and corresponding documents for ten specified years. You state some responsive information has been or will be provided to the requestor. You claim the submitted information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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).

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

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]

...

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

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

You state Austin Energy is a municipally-owned electric utility. Thus, Austin Energy is a public power utility for purposes of section 552.133. You inform us the submitted information pertains to Austin Energy’s generation unit specific and portfolio costs, as well as forecasts for those costs, and includes a purchased power agreement. Further, you state if this information is released it would place Austin Energy at a competitive disadvantage and cause financial harm to Austin Energy’s customers. We note the submitted information 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 representations and our review of the submitted information, we find the submitted information relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude the city must withhold the submitted information 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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 473191

Enc. Submitted documents

c: Requestor
(w/o enclosures)