



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2013

Ms. Lois A. Rockefeller
City Attorney for the City of Coleman
Wagstaff, Alvis, Stubbeman, Seamster & Longacre, LLP
290 Cedar
Abilene, Texas 79601-5720

OR2013-00209

Dear Ms. Rockefeller:

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# 475299.

The City of Coleman (the "city"), which you represent, received a request for the last electricity contract or contracts that have been signed and accepted for all the city's electricity matters and the electric bill for a specified billing cycle. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.133 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of American Electric Power Energy Partners, Inc. ("AEP"). Accordingly, you state, and provide documentation showing, you notified AEP of the request for information and of its right to submit arguments to this office as to why its submitted information should not be released. *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). We have received comments from AEP. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request general written comments stating the reasons why the stated exceptions apply that would allow the

information to be withheld. *Id.* § 552.301(e)(1)(A). You state the city received the request on October 9, 2012. Accordingly, the city's ten-business-day deadline was October 23, 2012 and its fifteen-business-day deadline was October 30, 2012. Although you timely raised and provided arguments for section 552.110 of the Government Code, you did not raise section 552.133 of the Government Code or provide arguments for this exception until November 19, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, with respect to section 552.133, the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision Nos. 630 (1994), 586 (1991), 319 (1982). This office has held a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Because section 552.133 of the Government Code can provide a compelling reason for non-disclosure, we will consider whether this exception is applicable to the submitted information.

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). Section 552.133 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:

...

(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;

...

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

You state the city owns and operates a municipal electric utility system that is a public power utility subject to section 552.133. You assert the submitted information pertains to the city's competitive activity, because it includes pricing information for purchased power subject to section 552.133(a-1). You explain release of this information would give competitors an advantage. You indicate, and we agree, 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 representations and our review, 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.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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 475299

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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