



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2013

Mr. William P. Chesser
Counsel for City of Coleman
Messer, Rockefeller & Fort, PLLC
4400 Buffalo Gap Road, Suite 2800
Abilene, Texas 79606

OR2013-19274

Dear Mr. Chesser:

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# 504835.

The City of Coleman (the "city"), which you represent, received a request for any invoices and credits the city has received from American Electric Power Energy Partners, Inc. ("AEP") during a specified time period and a list of checks, including check numbers and dates paid, issued to AEP during a specified time period. 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 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. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, you inform us some of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2013-00209 (2013) and 2013-12349 (2013). In Open Records Letter No. 2013-00209, we ruled the city must withhold the information at issue under section 552.133 of the Government Code. In Open Records Letter No. 2013-12349, we ruled the city must continue to rely on Open Records Letter No. 2013-00209 (2013) as a previous determination and

withhold the identical information in accordance with it, to the extent the submitted information is identical to the information previously requested and ruled upon by this office; to the extent the submitted information is not encompassed by Open Records Letter No. 2013-00209, the city must withhold the information at issue under section 552.133 of the Government Code. We have no indication that the law, facts, or circumstances on which the prior rulings were based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in the prior rulings, the city must continue to rely on those rulings as previous determinations and withhold the previously ruled upon information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the submitted information is not encompassed by Open Records Letter Nos. 2013-00209 and 2013-12349, we will address the arguments against its release.

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

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter Nos. 2013-00209 and 2013-12349, the city must continue to rely on those rulings as previous determinations and withhold the previously ruled upon information in accordance with those rulings. To the extent the submitted information is not encompassed by those prior rulings, 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

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

Ref: ID# 504835

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jay Jadwin
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(w/o enclosures)