



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2014

Mr. Todd Kimbrough
General Counsel - LP&L
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2014-07071

Dear Mr. Kimbrough:

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# 521082.

The City of Lubbock (the "city") received a request for (1) all bid documents for specified engineering services during a specified time period, (2) all signed engineering contracts for the specified engineering services during a specified time period, (3) any agendas or minutes of meetings of Lubbock Power & Light's Electric Utility Board (the "board") or the West Texas Municipal Power Agency ("WTMPA") where the bid documents and contracts were discussed during a specified time period, (4) all invoices and payments related to the contracts, and (5) any "capacity and energy supply agreements," including drafts or proposals. You state you have released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Xcel Energy ("Xcel"). Accordingly, you state, and provide documentation showing, you notified Xcel of the request for information and of its right to submit arguments to this office as to why the 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 considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. Section 551.104 of the Government Code provides, in part, “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov’t Code § 551.146(a)-(b); *see also* ORD 495 at 4. You state some of the requested information, which you have marked as Exhibit B, consists of certified agendas of executive sessions of the board. Based on your representations, we agree the city must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.² However, you have failed to demonstrate the remaining information at issue consists of a certified agenda or tape of a closed meeting. Therefore, the city may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 551.104 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.” Gov’t Code § 552.133(b). Section 552.133 provides, in relevant part, the following:

(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

¹We note the district is not required to submit the certified agenda or tape of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information under statutory predecessor to Gov’t Code § 552.101).

²We note that this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes the withholding of certain categories of information, including a certified agenda and tape of a closed meeting under section 552.101 in conjunction with section 551.104 of the Government Code, without the necessity of requesting an attorney general decision.

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;

(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; [and]

(C) effective fuel and purchased power agreements and fuel transportation agreements 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 Lubbock Power & Light (“LP&L”) is a municipally owned electric utility. Thus, you indicate LP&L is a public power utility for the purposes of section 552.133. You assert the submitted information in Exhibit C pertains to a competitive matter of LP&L, specifically identified by sections 552.133(a-1)(1)(A)-(C). Further, 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 Exhibit C relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude the city must withhold Exhibit C under section 552.133 of the Government Code.

In summary, the city must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. The city must withhold Exhibit C under section 552.133 of the Government Code. The city must release the remaining information.

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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', written in a cursive style.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 521082

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Mark Baylor
Xcel Energy
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Denver, Colorado 80202
(w/o enclosures)