



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2014

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

OR2014-13678

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# 531882.

The Lower Colorado River Authority (the "LCRA") received a request for all documentation pertaining to the creation and development of a specified transmission line project. You claim the submitted information is excepted from disclosure under sections 552.103, 552.104, 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." Gov't Code § 552.022(a)(3). A portion of the submitted information consists of a contract relating to the expenditure of public funds.

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

We have marked the document that is subject to subsection 552.022(a)(3) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). You seek to withhold the information subject to section 552.022 under sections 552.103, 552.105, 552.107, and 552.111 of the Government Code. However, sections 552.103, 552.105, 552.107, and 552.111 are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Therefore, the information subject to section 552.022 may not be withheld under section 552.103, section 552.105, section 552.107, or section 552.111 of the Government Code. However, we note the Texas Supreme Court has held the Texas Rules of Evidence are “other law” within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information subject to subsection 552.022(a)(3). We also note information subject to section 552.022 may be withheld under section 552.104 of the Government Code. Therefore, we will consider your claim under this exception for the information at issue. *See* Gov't Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). We will also consider your arguments for the submitted information not subject to section 552.022.

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has concluded a governmental body may seek protection as a competitor in the marketplace under section 552.104(a) and avail itself of the “competitive advantage” aspect of this exception if the governmental body can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You explain the LCRA is “authorized to develop and generate electric energy within its boundaries and to transmit and sell water [. . .] power and electric energy, within or without the boundaries of the district and acquire the necessary property rights and easements for

those projects.” Thus, you state the LCRA has a specific marketplace interest in easements and property rights along the transmission line route. You state the submitted information contains location of properties located along alternative routes for the transmission line and the LCRA staff’s and consultant’s valuations and reviews of information, including maps, and routing analysis. You further state the release of the submitted information would impact the negotiation position of the LCRA with property owners for easements and rights of way by allowing the owners to gain advantage in the negotiations. Based on your representations and our review, we conclude the LCRA has demonstrated how release of the submitted information would harm its marketplace interests in a competitive situation. Accordingly, the LCRA may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 531882

Enc. Submitted documents

c: Requestor
(w/o enclosures)