



ATTORNEY GENERAL OF TEXAS
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November 4, 2014

Mr. Francisco J. Garza
Counsel for Brownsville Public Utilities Board
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OR2014-19956

Dear Mr. Garza:

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# 542085.

The Brownsville Public Utilities Board (the "board"), which you represent, received a request for eleven categories of information pertaining to the Brownsville Cross Valley Natural Gas Pipeline Project, current consultant contracts, and information pertaining to specified questions posed by the requestor on an earlier date.¹ You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.105, 552.107, and 552.133 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Annova LNG, LLC; Douglas Pipeline Company; Exelon Generation Company, LLC; Houston Pipe Line Company, LP; Net Holdings Management, LLC; Port of Brownsville; Spectra Energy Transmission; Tenaska Brownsville Partners, LLC ("Tenaska"); Tennessee Gas Pipeline Company; Texas Eastern Transmission, LP; and Texas LNG, LLC. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 on behalf of

¹We understand the board sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

Tenaska. We have considered the submitted arguments and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we address the requestor's contention the board has not released portions of the requested information. The board states it will release some information to the requestor. Whether the board actually provided the information at issue to the requestor is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Thus, we assume the board has released to the requestor any responsive information for which the board is not claiming an exception. If not, the board must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the requestor contends portions of the requested information were previously released to the public and are now in the public domain. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, we note a governmental body is not precluded from invoking an exception to further public disclosure of information that has been released on a limited basis through no official action and against the wishes and policy of the governmental body. *See* Open Records Decision No. 376 at 2 (1983); *see also* Open Records Decision No. 387 at 3 (1983) (information that is not voluntarily released by a governmental body, but nevertheless comes into another party's possession, is not henceforth automatically available to everyone). We understand the board asserts the submitted information has not been publicly disclosed. Whether the information at issue was released is a question of fact. As previously noted, this office is unable to resolve disputes of fact in the open records ruling process. As such, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See*

²We 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 that those records contain substantially different types of information than that submitted to this office.

ORD 522 at 4. Further, we note the board claims the information is excepted from disclosure pursuant to section 552.133 of the Government Code, which makes information confidential by law for purposes of section 552.007. *See* Gov't Code § 552.133; *see also* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Thus, regardless of whether the exact submitted information was previously released to the public, we will consider the board's arguments under section 552.133.

Next, we note portions of the requested information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2013-06204 (2013) and 2013-17898 (2013). In Open Records Letter Nos. 2013-06204 and 2013-17898, we concluded the board must withhold the submitted information under section 552.133 of the Government Code. There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the board must continue to rely on Open Records Letter Nos. 2013-06204 and 2013-17898 as previous determinations and withhold the identical 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Next, we address the arguments against the disclosure of the submitted information that is not subject to these prior rulings.

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 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:

...

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and

distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider[.]

Id. § 552.133(a)-(a-1)(1)(E). We note section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *See id.* § 552.133(a-1)(2).

We understand the board is a municipally owned utility for purposes of section 552.133. You seek to withhold the remaining information under section 552.133(b). 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 a competitive matter as defined by section 552.133(a-1). *See id.* § 552.133(a-1)(1)(E). Thus, the board must withhold the remaining information under section 552.133.³

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the board must continue to rely on Open Records Letter Nos. 2013-06204 and 2013-17898 as previous determinations and withhold the identical information in accordance with those rulings. The board must withhold the remaining 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

³As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 542085

Enc. Submitted documents

c: Requestors
(w/o enclosures)

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