



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2014

Mr. Todd Kimbrough
General Counsel
Lubbock Power & Light
P.O. Box 2000
Lubbock, Texas 79457

OR2014-22498

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# 546469.

The City of Lubbock and its municipally owned electric utility, Lubbock Power and Light ("LP&L") (collectively, the "city") received a request for all e-mails between Electric Utility Board members during a specified time period and all e-mails sent by a specified individual to any external e-mail address during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney

acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state Exhibit B consists of communications between city attorneys and representatives from law firms representing the city and the city’s joint power agency, West Texas Municipal Power Agency. You state the communications are confidential and were made in furtherance of providing professional legal services to the city. We understand the communications have remained confidential. Based on your representations and our review, we find you have demonstrated the attorney-client privilege to the information in Exhibit B. Accordingly, the city may withhold Exhibit B under section 552.107(1) of the Government Code.

You raise section 552.133 of the Government Code for Exhibit C. 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:

...

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

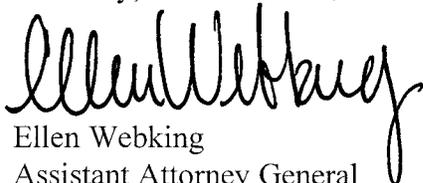
You state LP&L is a municipally owned utility for the purposes of section 552.133. You assert the information in Exhibit C pertains to “a wholesale electricity contract and system load characteristics.” You assert release of the information in Exhibit C could place LP&L at a competitive disadvantage in the wholesale electricity market. Further, the submitted information 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 information in Exhibit C relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude the city must withhold the submitted information in Exhibit C under section 552.133 of the Government Code.

In summary, the city may withhold Exhibit B under section 552.107(1) of the Government Code. The city must withhold Exhibit C 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 546469

Enc. Submitted documents

c: Requestor
(w/o enclosures)