



April 27, 2001

Mr. Michael J. Cosentino  
City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2001-1729

Dear Mr. Cosentino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146580.

The City of Bryan (the "city") received the following request: "Total dollar amount only for advertising for [Bryan Texas Utilities] for year 2000, including legal. Please, all advertising and promotional expenses, any related expenses and any renegotiated contracts." You state that the aggregate amount spent by BTU for advertising during the year 2000 will be furnished to the requestor. You claim, however, that some of the requested information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.131 of the Government Code excepts from disclosure a public power utility's information related to a competitive matter. Section 552.131(b) provides:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a

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<sup>1</sup>We 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.

competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.131(b). A "competitive matter" is defined as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity, and the release of which would give an advantage to competitors or prospective competitors. Gov't Code § 552.131(a)(3). Section 552.131(a)(3) lists thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.131 is inapplicable to the requested information only if, based on the information provided, the attorney general determines 1) that the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter, or 2) that the information requested is not reasonably related to a competitive matter. Gov't Code § 552.131(c).

The city council passed Resolution No. 2639 by vote pursuant to section 552.131 in which it defined certain categories of information as competitive matters. You state that BTU's "[a]dvertising strategies, marketing strategies, and information revealing the costs related thereto constitute business operations information[.]" Based on this representation and our review of the submitted sample of documents, we believe that they are covered by the city council resolution. In addition, the submitted documents do not fall within any of the thirteen categories of information made public by section 552.131(a). Therefore, you may withhold the submitted documents under section 552.131(b). Because section 552.131 is dispositive, we need not address your other claimed exception.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/seg

Ref: ID# 146580

Encl. Submitted documents

cc: Ms. Jeannette Roman  
508 East 30<sup>th</sup> Street  
Bryan, Texas 77803  
(w/o enclosures)