



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2006

Mr. Frank J. Garza
For the Firm
Davidson & Troilo, P.C.
7550 W IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2006-04912

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# 248868.

The Brownsville Public Utility Board (the "board") received a request for "the contract for purchase of Unit 10 generator." You claim that the requested information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by an attorney for the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information is a contract subject to section 552.022 of the Government Code. Under section 552.022(a)(3), information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is expressly public unless it is expressly confidential under other law. However, section 552.022 does not apply to information that is subject to section 552.133 of the Government Code. *See* Gov't Code § 552.133(d). Accordingly, we will address whether the submitted contract may be withheld under section 552.133.

Section 552.133 of the Government Code exempts from disclosure a public power utility's information related to a competitive matter. Section 552.133(b) provides:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a 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 § 552.133(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 § 552.133(a)(3). Section 552.133(a)(3) lists thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the requested information only if, based on the information provided, the attorney general determines 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 that the information requested is not reasonably related to a competitive matter. Gov't Code § 552.133(c).

The board informs us that it is a public power utility for purposes of section 552.133. The board also has submitted a copy of a resolution delineating categories of information that have been determined by the board to be competitive matters for purposes of section 552.133. Based on our review of your arguments and the resolution, we find that the submitted contract relates to a competitive matter as defined under the resolution. In addition, we have no evidence to conclude that the board failed to act in good faith in adopting this resolution, and the adopted competitive matter in that resolution does not clearly fall within any of the thirteen categories of information made public by section 552.133(a).

In this regard, we note that the requestor argues that the contract for the purchase of the generator "would appear to be a major capital expense that would be included in an audited financial statement" and thus fall within one of the thirteen categories of information made public by section 552.133(a). See Gov't Code § 552.133(a)(3)(E) (making public aggregate information regarding receipts and expenditures of the public power utility, of the type included in audited financial statement). However, the contract at issue relates to a specific

transaction. Thus, any expenditure information in the contract relates to that specific transaction, and is not aggregate information made public by section 552.133(a)(3)(E). Therefore, based on the board's representations and its resolution, we conclude that the submitted contract is excepted from disclosure under section 552.133 of the Government Code and may be withheld from the requestor on this basis.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 248868

Enc. Submitted documents

c: Mr. Jeff Raymond
The Brownsville Herald
1135 East Van Buren Street
Brownsville, Texas 78250
(w/o enclosures)

Mr. Brian G. Janis
Attorney at Law
1325 Palm Boulevard, Suite B
Brownsville, Texas 78520-7268
(w/o enclosures)