



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2006

Mr. Michael S. Copeland
Utility Attorney
Utility Administration Department
City of Denton
215 East McKinney
Denton, Texas 76201

OR2006-12543

Dear Mr. Copeland:

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# 262905.

The City of Denton (the "city") received a request for the annual salaries and benefits for a number of specified city employees as well as estimated salary and benefit amounts for any of those positions that are vacant. You state that you will release the benefits information to the requestor. However, you claim that the salary information is excepted from disclosure under sections 552.101, 552.107, and 552.133 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.133 of the Government Code excepts from required public disclosure information held by a public power utility that is related to a competitive matter. *See* Gov't Code § 552.133(b). "Competitive matter" is defined as a matter that the public power utility governing body in good faith determines by vote to be related to the utility's competitive activity. *Id.* § 552.133(a)(3). The governing body also must determine, in like manner, that the release of the information would give an advantage to competitors or prospective competitors. *Id.* Section 552.133(a)(3) lists thirteen categories of information that may not be deemed to be competitive matters. The attorney general may conclude that

¹We note that the city acknowledges that it has not submitted arguments regarding sections 552.101 and 552.107. Therefore, we do not consider those exceptions in this ruling.

section 552.133 is inapplicable to the information at issue only if, based on the information provided, the attorney general determines 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 that the information requested is not reasonably related to a competitive matter. *Id.* § 552.133(c).

You inform us that the requested salary information relates to employees of the city's electric department. You inform us that the city owns and operates Denton Municipal Electric and that the city council is the utility's governing body for purposes of section 552.133. You further explain that on April 18, 2000, the city council approved Resolution No. R 2000-15, declaring certain information, including "revenue and expense projections and targets," "cash flow projections," and "personnel compensation" to be competitive for purposes of section 552.133. You have submitted a copy of the resolution in requesting this decision. You state that the submitted information, which consists of the salary information of the individuals named in the request, is reasonably related to a competitive matter as defined by the resolution at issue. Based on these representations and our review, we agree that the submitted information is a competitive matter for purposes of section 552.133. Furthermore, this information is not among the thirteen categories of information expressly exempted from the definition of competitive matter under section 552.133(a)(3). Based on your representations, we cannot conclude that the city council failed to act in good faith. Consequently, we agree that the submitted information relates to a competitive matter in accordance with the city's resolution and, therefore, is excepted from disclosure pursuant to section 552.133 of the Government Code.

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); *Tex. 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/dh

Ref: ID# 262905

Enc: Submitted documents

c: Mr. Bob Clifton
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Denton, Texas 76201
(w/o enclosures)