



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 30, 2009

Mr. Vic Ramirez  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR2009-04126

Dear Mr. Ramirez:

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# 338371.

The Lower Colorado River Authority (the "authority") received a request for the recently entered contract between the authority and the Pedernales Electric Cooperative (the "PEC") for the provision of electric power by the authority. You claim that the requested contract is excepted from disclosure under section 552.133 of the Government Code. You also state that release of the submitted information may implicate the proprietary interests of the PEC. Accordingly, you have notified the PEC of the request and of its opportunity to submit arguments to this office as to why the contract should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.133 of the Government Code exempts from disclosure a public power utility's information related to a competitive matter.<sup>1</sup> 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). Section 552.133(a)(3) defines a "competitive matter" 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. *See id.* § 552.133(a)(3). However, section 552.133(a)(3) also provides 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. *Id.* § 552.133(c).

You inform us that the authority is the governing body of a public power utility. You further inform us, and provide documentation showing, that the authority adopted a resolution that defines contract information to be within the scope of the term "competitive matter." The submitted contract is not among the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of a competitive matter. Furthermore, we have no evidence that the authority failed to act in good faith. *See id.*

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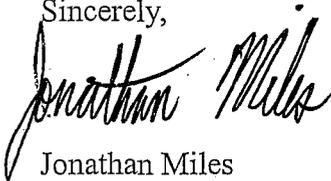
<sup>1</sup>We note that the submitted information falls within the scope of section 552.022(a)(3) of the Government Code, which requires disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[,]" unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(3). Section 552.133(d) provides, however, that "[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under other law does not apply to information that is excepted from required disclosure under [section 552.133]." *Id.* § 552.133(d).

§ 552.133(c). Consequently, we determine that the submitted contract relates to a competitive matter in accordance with the authority's resolution you have provided and, therefore, is excepted from disclosure pursuant to 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 338371

Enc. Submitted documents

c: Requestor  
(w/o enclosures)