



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2009

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2009-04995

Dear Mr. Mann:

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# 342732 (GCA 09-0140 and GCA 09-0141).

The City of Garland (the "city") received two requests for (1) the job titles and salaries of the twenty-five most highly salaried employees of the city, and (2) the twenty-five highest salaries paid by Garland Power & Light ("GP&L"), an electric utility owned and operated by the city, and the department paying each of those salaries. You state that the city has released all of the responsive information other than the portions you have marked. You claim that the marked portions of the submitted information are excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

Information or records are excepted from [disclosure] 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 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. *Id.* § 552.133(a)(3). Section 552.133(a)(3) lists thirteen categories of information that may not be deemed competitive matters. *See id.* The attorney general may conclude that 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).

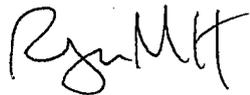
You inform us that GP&L is a city-owned public power utility for purposes of section 552.133. You have also submitted a copy of Resolution No. 9160, which delineates categories of information that the Garland City Council, the governing body of GP&L, determined by vote to be competitive matters for purposes of section 552.133. You assert that the marked portions of the submitted information come within the scope of GP&L's competitive matters policy and therefore are protected from public disclosure under section 552.133. After reviewing your arguments and the submitted information, we have no reason to conclude that GP&L's governing body failed to act in good faith in determining this particular matter to be competitive. *See id.* Furthermore, we conclude that the information at issue is reasonably related to a competitive matter as defined by GP&L's competitive matters policy and does not fall within any of the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. *See id.* § 552.133(a)(3). Therefore, based on your representations and our review, we conclude that the city must withhold the portions of the submitted information that you have marked pursuant to section 552.133 of the Government Code.¹

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.

¹We note that the submitted information falls within the scope of section 552.022(a)(2) of the Government Code, which requires disclosure of "the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of 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).

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, 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,

A handwritten signature in black ink, appearing to read "Ryan T. Mitchell". The signature is fluid and cursive, with the first name "Ryan" being more prominent than the last name "Mitchell".

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/eb

Ref: ID# 342732

Enc. Submitted documents

cc: Requestor
(w/o enclosures)