



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2009

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

OR2009-06731

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# 343499.

The Lower Colorado River Authority ("LCRA") received a request for the current rate Bluebonnet Electric Cooperative, Inc. ("BEC") pays for its wholesale energy costs, and a second request for the rate details of LCRA's Price Select tariff. You state that LCRA's Wholesale Generation Prices Sheet is responsive to both requests and claim that this information is excepted from disclosure under section 552.133 of the Government Code. You also explain that the submitted information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified BEC of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments received from BEC pursuant to section 552.305(d) of the Government Code.

Initially, we note that LCRA was untimely in its request for an attorney general decision regarding the first request for information. Section 552.301 of the Government Code

prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. LCRA received the first request for information on February 26, 2009, but did not request a ruling from this office until March 13, 2009. Thus, LCRA failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.133 and third party interests can provide compelling reasons to withhold information, we will consider the applicability of your claim under section 552.133 and BEC's arguments.

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 [required public 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 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. *See id.* § 552.133(a)(3). However, 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 requested information only if, based on the information provided, the

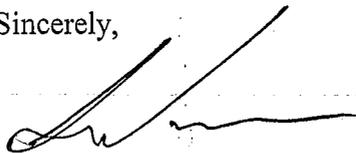
attorney general determines that the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. *See id.* § 552.133(c).

We understand that LCRA is the governing body of a public power utility. You have also submitted a copy of the LCRA Board's Policy 103 and Policy 202, which delineate categories of information that the Board has, by vote as we understand, determined to be competitive matters for purposes of section 552.133. You assert that the submitted information falls within the categories of LCRA's competitive matters and therefore is protected from public disclosure under section 552.133. We have no reason to conclude that LCRA failed to act in good faith in determining this particular matter to be competitive. Furthermore, we conclude that this information is reasonably related to a competitive matter as defined by LCRA's competitive matters policy and the submitted information is not among 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 submitted information is excepted from disclosure by 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.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

¹As our ruling is dispositive, we need not address BEC's remaining arguments against disclosure.

Ref: ID# 343499

Enc. Submitted documents

c: Requestor (2)
(w/o enclosures)

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