



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2009

Mr. Matthew L. Wade
General Counsel
Lubbock Power & Light
P. O. Box 2000
Lubbock, Texas 794457

OR2009-10279

Dear Mr. Wade:

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# 351633.

The City of Lubbock (the "city"), which you represent, received a request for information related to bonuses for Lubbock Power & Light employees. You claim that the submitted information is excepted from disclosure under section 552.133 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

You assert that information related to bonuses paid to the city's public electric utility employees is excepted under section 552.133, which excepts from disclosure a public power utility's information related to a competitive matter. Section 552.133(b) provides as follows:

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

¹Although you also raise section 552.101 of the Government Code, you do not present any arguments against disclosure under that section. We note this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2000), 575 at 2 (1990).

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).

You inform us, and provide documentation showing that on October 14, 1999 the city council, as the governing body of Lubbock Power & Light, approved a resolution, in which the city council defined business operations information, including personnel staffing levels and compensation, to be within the scope of the term "competitive matter" for the purposes of section 552.133. The requested information, which consists of information related to bonuses paid to public electric utility employees, is not among the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. Furthermore, we have no evidence that the city failed to act in good faith. *See id.* § 552.133(c). Consequently, we determine that the submitted information relates to a competitive matter in accordance with the city council's resolution you have provided and is, therefore, 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, 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 "Jennifer Burnett". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 351633

Enc. Submitted documents

c: Requestor
(w/o enclosures)