



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2009

Mr. Paul M. Gonzalez
Law Offices of Davidson & Troilo
7550 West IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2009-12337

Dear Mr. Gonzalez:

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# 354168.

The Brownsville Public Utility Board (the "board"), which you represent, received a request for a specified assessment report. You claim that the requested information is excepted from disclosure under sections 552.111 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information consists of a completed report. Under section 552.022(a)(1) of the Government Code, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Gov't Code § 552.022(a)(1). Although you seek to withhold the submitted information under section 552.111 of the Government Code, this section is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. See Open Records Decision Nos. 470 at 7 (1987) (statutory predecessor to section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the board may not withhold the submitted information under section 552.111. 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 law does not apply to information that is excepted from required disclosure under [section 552.133].” Gov’t Code § 552.133(d). Accordingly, we will consider your argument under section 552.133 of the Government Code.

You seek to withhold a portion of the submitted information under section 552.133 of the Government Code, 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 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.

Id. § 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. 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 board, as governing body of a public power utility, passed a resolution by vote pursuant to section 552.133 in which it defined the submitted information to be within the scope of the term “competitive matter.” You have submitted a copy of the resolution. The information at issue is not among the thirteen categories of information expressly exempted from the definition of competitive matter and, based on the information provided in connection with this request, we cannot conclude that the board failed to act in good faith. Consequently, we agree that the information at issue is a competitive matter in accordance with the board’s resolution and, therefore, is excepted from disclosure pursuant to section 552.133. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 354168

Enc. Submitted documents

cc: Requestor
(w/o enclosures)