



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2009

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

OR2009-12712

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# 354691.

The Lower Colorado River Authority (the "authority") received a request for the power cost recovery factor for a specified time period. You claim the submitted pricing action proposals are excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 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

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 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 the issue, matter, or activity is a competitive matter or the information requested is not reasonably related to a competitive matter. *Id.* § 552.133(c).

You indicate, and the submitted information reflects, the authority operates a public power utility for purposes of section 552.133. You inform us, and provide documentation showing, the authority's board, as governing body of a public power utility, recently modified its policies to revise its definition of "competitive matter" pursuant to section 552.133. The policy defines, among other things, rates and pricing strategies and targets to be within the scope of the term "competitive matter." The pricing action proposals at issue are not among the thirteen categories of information section 552.133(a)(3) expressly excludes from the definition of a competitive matter. Furthermore, we have no evidence the authority's board failed to act in good faith. *See id.* Accordingly, we determine the information at issue relates to a competitive matter in accordance with the authority's board's policy 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](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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 354691

Enc. Submitted documents

c: Requestor  
(w/o enclosures)