



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 21, 2009

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2009-18032

Dear Ms. DeLuca:

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# 365002.

The City of Bryan (the "city") received a request for the submitted quotes from a specified utilities bid. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. You also explain that the submitted information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified Grande Truck Center, Terex Utilities, Tommie Vaughn Motors, Inc., and Altec Industries, Inc. of this request for information and of their 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 exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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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 that those records contain substantially different types of information than that submitted to this office.

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

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.

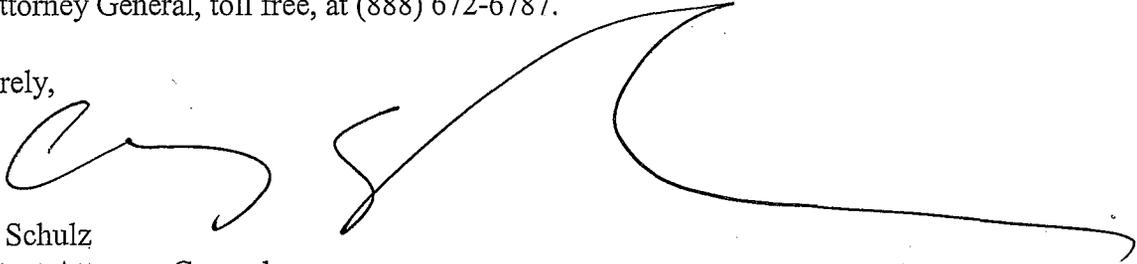
Gov't Code § 552.133(b). Section 552.133(a)(3) defines a "competitive matter" as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity, and the release of which would give an advantage to competitors or prospective 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 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 state the submitted information pertains to Bryan Texas Utilities ("BTU"), which you state is a city-owned public power utility for purposes of section 552.133. You inform us, and provide documentation showing, the city council, as governing body of BTU, passed resolution number 2639, in which the council defined "competitive matters" for purposes of section 552.133 of the Government Code. You claim the information at issue is reasonably related to section 1(B)(5) of the resolution, which defines purchasing and contract information as a competitive matter. The information at issue 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 council failed to act in good faith. *See id.* § 552.133(c). Consequently, we determine the submitted information relates to competitive matters in accordance with the submitted resolution. Therefore, the city must withhold the submitted information pursuant to section 552.133 of the Government Code. As our ruling is dispositive, we need not consider your remaining argument against disclosure.

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 black ink, appearing to read 'Chris Schulz', written over a large, faint, stylized watermark or background graphic.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 365002

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)