



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2010

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

Mr. Matthew L. Wade  
General Counsel — LP&L  
P.O. Box 2000  
Lubbock, Texas 79457

OR2010-01686

Dear Ms. Sims and 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# 369138.

The City of Lubbock (the "city") received two requests each from different requestors for the following information related to the city's municipally-owned electric utility, Lubbock Power & Light ("LP&L"): (1) a list of accounts terminated for delinquency over a specified time period; (2) a list of accounts required to place deposits over a specified time period; (3) financial statements from a specified time period; (4) managerial and employee salaries; (5) LP&L's contract to purchase Xcel Energy ("Xcel") and the related confidentiality agreement; (6) information related to negotiations to purchase Xcel over a specified time period; (7) communications between specified city and LP&L officials and employees and specified Xcel officials and employees; (8) twelve categories of financial and business operations information from a specified time period; (9) information related to plans for future electric service; and (10) projected operation expenses and rate and fuel cost charges after 2019.<sup>1</sup>

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<sup>1</sup>This office originally assigned identification numbers 369138 and 369171 to these requests for a ruling. These requests have been combined and are being issued as one ruling with the identification number noted above.

The city and LP&L have submitted separate sets of responsive information and arguments against disclosure. The city claims its submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. LP&L claims its submitted information is excepted from disclosure under sections 552.107 and 552.133 of the Government Code. LP&L also explains that its submitted information may contain a third party's proprietary information subject to exception under the Act. Accordingly, LP&L notified Xcel 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 exceptions claimed by the city and LP&L and reviewed the submitted representative samples of the requested information.<sup>2</sup> We have also considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the city informs us that portions of the submitted information were the subject of a previous request for information, in response to which this office issued Open Records Letter Nos. 2008-17024 (2008). In that ruling, we concluded that the city must withhold the information at issue under section 552.133 of the Government Code. We have no indication that the law, facts, and circumstances on which this previous ruling was based have changed since the issuance of this prior ruling. Thus, to the extent the information at issue is identical to the information previously requested and ruled upon by this office, the city must withhold the information in accordance with Open Records Letter No. 2008-17024. *See* Open Records Decision No. 673 (2001) (outlining elements of first type of previous determination). For the information not previously requested and ruled upon by this office, we will address the city's arguments for this information.

Next, we note that portions of the submitted information include salary information of public employees and contracts relating to the expenditure of public funds. This information is subject to required disclosure under sections 552.022(a)(2) and (a)(3) of the Government Code, unless the information is expressly confidential under other law.<sup>3</sup> 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 other law does not apply

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<sup>2</sup>We assume the "representative samples" of records submitted to this office are 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.

<sup>3</sup>Section 552.022(a)(2) requires disclosure of "the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body." Gov't Code § 552.022(a)(2). Section 552.022(a)(3) requires disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." *Id.* § 552.022(a)(3).

to information that is excepted from required disclosure under [section 552.133].” *Id.* § 552.133(d). Accordingly, we will consider your argument under section 552.133 of the Government Code.

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 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).

The city and LP&L each state the submitted information pertains to LP&L, which is a city-owned public power utility for purposes of section 552.133. The city and LP&L each inform us, and provide documentation showing, that the city council, as governing body of LP&L, passed resolution number 6559, in which the council defined “competitive matters” for purposes of section 552.133. The city and LP&L each assert the submitted information comes within the scope of the specified provisions of the resolution. 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. Furthermore, we have no evidence that the city council failed to act in good faith. *See id.* § 552.133(c). Consequently, we determine the information at issue 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.<sup>4</sup>

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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

Ref: ID# 369138

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

cc: Xcel Energy/Southwestern Public Service Company  
P.O. Box 1261  
Amarillo, Texas 79105  
(w/o enclosures)

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<sup>4</sup>As this ruling is dispositive, we need not address the remaining arguments against disclosure.