



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2011

Ms. Elaine Nicholson  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2011-14511

Dear Ms. Nicholson:

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# 432256.

The City of Austin (the "city") received a request for the water and electric bills for the past year at a specified address. You state some information has been released to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.133 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, you note the submitted information may be subject to Open Records Letter No. 2001-5582 (2001), a previous determination issued to the city by this office. This previous determination permitted the city to withhold eighteen specified types of information regarding Austin Energy customer accounts under section 552.133 of the Government Code without requesting a decision from this office. However, as you acknowledge, the Texas Legislature recently amended section 552.133. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1613, § 2 (to be codified as an amendment to Gov't Code § 552.133). Therefore, the law on which Open Records Letter No. 2001-5582 was based has changed, and the city may no longer rely on it as a previous determination. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a)). Therefore, we will address the city's argument against disclosure of the submitted information.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Act of May 24, 2011, 82nd Leg., R.S., S.B. 1613, § 2 (to be codified as an amendment to Gov't Code § 552.133(b)). As noted above, the Texas Legislature recently amended section 552.133, which now provides in relevant part:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

*Id.* (to be codified as amendments to Gov't Code § 552.133(a)-(a-1)). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.*

You state the city's electric utility company, Austin Energy, is a public power utility for purposes of section 552.133. You inform us the information you have marked pertains to Austin Energy customer billing and usage information. The information at issue is not among the fifteen categories of information expressly excluded from the definition of "competitive matter" by section 552.133(a-1)(2). Based on our review of your arguments and the submitted information, we find the customer billing and usage information you have marked relates to a competitive matter as defined under section 552.133(a-1). Thus, we conclude the marked information is excepted from disclosure under section 552.133 of the Government Code. The remaining information must be released to the requestor.

You also ask this office to issue a new previous determination to replace Open Records Letter No. 2001-5882. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.133(b) of the Government Code allowing the city to withhold the following information regarding Austin Energy electric customers: names, current addresses, former addresses, forwarding addresses, work addresses, telephone numbers, dates of birth, social security numbers,

driver's license numbers, spouse information, roommate information, employer information, dates of service, electric bills, billing history, and information on whether an individual is a subscriber, whether an individual's service is active, and customer information from the "CIS Non-confidential Update List." So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 432256

Enc. Submitted documents

c: Requestor  
(w/o enclosures)