



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2013

Ms. Donna L. Johnson  
Counsel for the City of Spring Valley  
Olson & Olson LLP  
2727 Allen Parkway  
Wortham Tower, Suite 600  
Houston, Texas 77019

OR2013-05818

Dear Ms. Johnson:

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# 483805 (Spring Valley Reference No. SVV13-002).

The City of Spring Valley Village (the "city"), which you represent, received a request for the city's current electricity contract. You claim that the submitted information is excepted from disclosure under section 552.133 of the Government Code. You also state the release of the submitted information may implicate the proprietary interest of third parties. Accordingly, you state you have notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 the circumstances). We have considered the exception you claim and reviewed 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." Gov't Code § 552.133(b). Section 552.133 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.

*Id.* § 552.133(a). Section 552.133 only protects the competitive interest of a public power utility. *See* Open Records Decision No. 666 at 2 (2000) (statutory predecessor to section 552.133 enacted to protect municipally owned utilities from public disclosure of competitive matters). You inform us the city contracts with Direct Energy for its electric services. However, you do not inform us the city owns or operates a public power utility. Thus, we find the city may not withhold any of this information under section 552.133 of the Government Code.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter we have not received comments from any of the third parties explaining how release of the information at issue would affect their proprietary interests. *See id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the information on the basis of these third parties' proprietary interests. As you raise no further exceptions against disclosure, the submitted 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](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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 483805

Enc. Submitted documents

c: Requestor  
(w/o enclosures)