



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 14, 2014

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

OR2014-02915

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# 514516.

The Lower Colorado River Authority (the "LCRA") received a request for purchase order information for a specified period of time. You state you have released some information. You claim the remaining requested information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has concluded a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the

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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.

“competitive advantage” aspect of this exception if the governmental body can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You state the LCRA has statutory authority to engage in competition in the electric utility marketplace and to develop, generate, distribute, and sell electric energy. You inform us the LCRA supplies electricity to more than a million residents of 53 counties in central and southeast Texas. You state the LCRA does so through 44 wholesale customers, including 33 cities and 11 electric cooperatives. You explain the submitted information “is a representative sample of purchase order data related to customer billing, contract and usage information, electronic power pricing information, system load characteristics and electric marketing analyses and strategies information” that can be used to determine or back-calculate the electric rate that LCRA charges its wholesale electric customers. You further explain the LCRA’s customers have sources other than the LCRA from which to obtain some of their electricity requirements. You contend the release of the submitted information would provide competitors with an unfair advantage by enabling them to determine the prices, terms, and conditions necessary to beat the LCRA’s prices, terms, and conditions, would pose a serious threat to the LCRA’s electric utility marketplace interests, and would jeopardize the LCRA’s competitiveness in the marketplace. Based on your representations, we find you have demonstrated the LCRA has specific marketplace interests. *See* ORD 593 at 3. We also find you have demonstrated a specific threat of actual or potential harm to the LCRA’s interests in a particular competitive situation. We therefore conclude the LCRA may withhold the information at issue under section 552.104 of the Government Code.<sup>2</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.

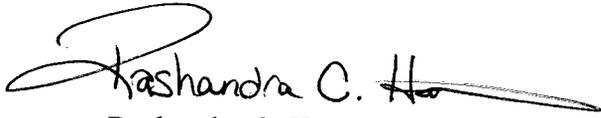
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Rashandra C. Hayes". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end.

Rashandra C. Hayes  
Assistant Attorney General  
Open Records Division

RCH/dls

Ref: ID# 514516

Enc. Submitted documents

c: Requestor  
(w/o enclosures)