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ATTORNEY GENERAL OF TEXAS

April 23, 2015

Mr. Cary L. Bovey
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OR2015-07858

Dear Mr. Bovey:

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# 561081.

The City of Llano (the "city"), which you represent, received three requests from three different requestors for (1) the current Lower Colorado River Authority (the "authority") contract with the city for wholesale power and all documents relating to such contract, (2) the current and 2014 rates being charged by the authority to the city, and (3) all documents relating to how city residents' utility bills are generated. Although the city takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of the authority. Accordingly, the city states, and provides documentation showing, it notified the authority of the request for information. *See Gov't Code § 552.304* (interested part may submit written comments regarding availability of requested information). We have received comments from the authority. We have considered the submitted arguments and reviewed the submitted information.

The authority informs us the city inadvertently posted some of the information at issue on its website in support of an item to be discussed during one of its council meetings. The authority states it subsequently requested the city remove the information from its website and the city did so. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential by law. In this instance, however, the city has not taken any position regarding the public availability of the information at issue, but rather has determined the authority's interests may be implicated. The authority claims sections 552.103, 552.104, 552.110, and 552.133 of the Government Code for the information at issue. Sections 552.103 and 552.104 are discretionary exceptions to disclosure and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of the information that has been previously released may be withheld under section 552.103 or section 552.104.¹ However, because sections 552.110 and 552.133 make information confidential, we will consider the authority's arguments under these sections for any information that was previously released. We will also consider the authority's arguments under sections 552.103, 552.104, 552.110, and 552.133 for the remaining 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.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive

¹Although the authority argues the information at issue is subject to the snap-back provision, we note the snap-back provision applies to written discovery. *See* Tex. R. Civ. P. 193.3(d) ("snap-back" provision regarding inadvertent disclosure of privileged information and return of said documents).

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:

...

(B) bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies; [and]

...

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

Id. § 552.133(a), (a-1)(1)(B), (F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2).

The authority explains it is a public power utility for purposes of section 552.133. The authority states the requested information relates to customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies information. The authority explains the release of the requested information would jeopardize the authority's position in the competitive electric market and provide an advantage to its competitors in that market by providing them with specific terms and provisions they can use to their competitive advantage. Thus, the release of the requested information would put the authority at a competitive disadvantage. 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 the authority's representations and our review, we find the requested information relates to competitive matters as defined by section 552.133(a-1). Accordingly, we conclude the city must withhold the requested information under section 552.133 of the Government Code.²

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.

²As our ruling is dispositive, we need not address the authority's remaining arguments against disclosure.

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

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 561081

Enc. Submitted documents

c: Requestor
(w/o enclosures)