



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 16, 2015

Ms. Skye Masson  
Assistant City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2015-14529

Dear Ms. Masson:

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# 571829 (PIR Nos. G001188-043015 & G001256-052015).

The City of Georgetown (the "city") received two requests from different requestors for information related to a purchase power agreement ("PPA"), to include the PPA document and any ordinances or regulations created to implement the PPA.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.133 of the Government Code. Additionally, you state the proprietary interests of SunEdison, LLC ("SunEdison") might be implicated by the request. Accordingly, you notified SunEdison of the request and of its right to submit arguments to this office explaining why its 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); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments from SunEdison. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>We note the city sought and received clarification from one of the requestors regarding the request. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note you did not submit any information responsive to the request for any ordinances or regulations created to implement the PPA. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume the city has released it to the requestor. If the city has not released any such information, it must do so. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter."<sup>2</sup> Gov't Code § 552.133(b). Section 552.133 provides, in relevant part, the following:

(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:

(A) generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;

(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;

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts; [and]

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<sup>2</sup>We note the submitted information falls within the scope of section 552.022(a)(3) of the Government Code, which 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[.]" unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(3). Section 552.133(c) 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 law does not apply to information that is excepted from required disclosure under [section 552.133]." *Id.* § 552.133(c).

(D) risk management information, contracts, and strategies, including fuel hedging and storage[.]

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

You state the Georgetown Utility System (“GUS”) is a city-owned utility that is a public power utility for purposes of section 552.133. You inform us the submitted information consists of a power purchase agreement for solar generated power and “contains the bidding and pricing information for the purchased solar power to be delivered to the [c]ity, . . . the delivery and facilities related to purchased solar power, as well as risk management strategies relating to future [power] generation[,] and the financial arrangements for such strategies.” You assert release of the information at issue would result in competitive harm to GUS. 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 the arguments and the submitted information, we find the submitted information relates to a competitive matter as defined under section 552.133(a-1). Thus, we conclude the city must withhold the submitted information from disclosure under section 552.133 of the Government Code.<sup>3</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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

  
Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 571829

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Rhonda Mates  
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Austin, Texas 78701-4093  
(w/o enclosures)