



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2015

Ms. Gretchen Reuwer
Communications Manager
New Braunfels Utilities
P.O. Box 310289
New Braunfels, Texas 78131-0289

OR2015-21670

Dear Ms. Reuwer:

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# 583362.

New Braunfels Utilities ("NBU") received a request for the most recent date NBU disconnected utility services to a specified address. You claim the submitted information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor only seeks the date NBU disconnected utility services to a specified address, which we have marked. Accordingly, any other information is not responsive to the request for information. This ruling does not address the availability of non-responsive information, and NBU need not release non-responsive information to the requestor.

Next, we must address NBU's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the

information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). NBU received the request for information on July 16, 2015. Thus, NBU was required to request a decision from this office by July 30, 2015, and to submit the information required by section 552.301(e) by August 6, 2015. Consequently, because NBU submitted the request for a decision and the information at issue on August 7, 2015, we find NBU failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.133 can provide a compelling reason to overcome this presumption. Therefore, we will address your argument under this exception.

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

We understand NBU is a municipally owned utility for purposes of section 552.133. You inform us the NBU Board of Trustees (the “board”) adopted a resolution delineating categories of information determined by the board to be competitive matters for purposes of section 552.133. You state the list includes competitive customer information, including customer lists or identification data, consumption data, or billing/account data. 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 your assertions, we find the requested information relates to a competitive matter as defined under the resolution. In addition, we have no evidence to conclude NBU failed to act in good faith in adopting this resolution. Thus, we conclude the submitted responsive information is excepted from disclosure under section 552.133 of the Government Code and must be withheld from the requestor on this basis.

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, 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 Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 583362

Enc. Submitted documents

c: Requestor
(w/o enclosures)