



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 9, 2016

Mr. Shan Rutherford
Counsel for City of Lampasas
Law Offices of J.C. Brown, P.C.
1411 West Avenue, Suite 100
Austin, Texas 78701

OR2016-13195

Dear Mr. Rutherford :

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# 613629.

The City of Lampasas (the "city"), which you represent, received a request for Park Board minutes during a specified period, any agreement with a named company, and utility bills for the named company. You state the city will release the Park Board minutes. 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 representative sample of information.¹

You have submitted a confidentiality and non-disclosure agreement to support your argument that the information at issue is confidential. Information is not confidential under the Act simply because a governmental body and a third party agree that it will be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See Attorney General Opinion JM-672 (1987)*; Open Records

¹We 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 those records contain substantially different types of information than those submitted to this office.

Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Section 552.133 of the Government Code exempts 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 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:

...

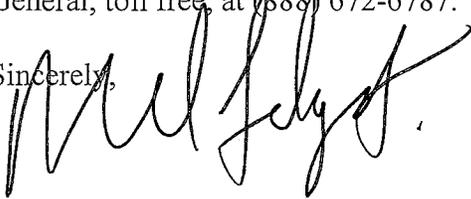
(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

Id. § 552.133(a), (a-1)(1)(F). 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 information at issue is related to agreements between the city and the Lower Colorado River Authority (the “LCRA”). You explain this information reveals competitive matters related to the LCRA, not the city. We also find the city has not explained it is a “public power utility” for purposes of section 552.133. Thus, the city has failed to demonstrate the information at issue reasonably relates to a public power utility’s competitive matter. Accordingly, the city may not withhold the information at issue under section 552.133 of the Government Code. As you raise no other exceptions, the city must release the information at issue.

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is fluid and cursive, written over the word "Sincerely,".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 613629

Enc. Submitted documents

c: Requestor
(w/o enclosures)