



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2016

Mr. Jonathan T. Koury
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2016-27150

Dear Mr. Koury:

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# 638614 (ORR No. 1455).

The City of Bryan (the "city") received a request for certain purchasing information made by Bryan Texas Utilities ("BTU") during a specified time period.¹ You claim some of 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.

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, 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.

¹You state the city sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that 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 governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

(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;

...

(E) plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider[.]

Id. § 552.133(a), (a-1)(1)(A)-(C), (E). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). You state BTU is an electric generation and distribution system owned by the city. You state BTU is a public power utility for purposes of section 552.133. You assert the information you have indicated pertains to competitive matters of BTU, specifically identified by subsections 552.133(a-1)(1)(A)-(C) and (E). Further, 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 representations and our review, we find the information you have indicated pertains to competitive matters as defined by section 552.133(a-1). Thus, we conclude the city must withhold the information you have indicated under section 552.133 of the Government Code. The city must release the remaining information.

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,


Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 638614

Enc. Submitted documents

c: Requestor
(w/o enclosures)