



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 6, 2017

Mr. Paul M. González  
Council for Brownsville Public Utility Board  
Davidson Troilo Ream & Garza, P.C.  
601 Northwest Loop 410, Suite 100  
San Antonio, Texas 78216-5511

OR2017-04753

Dear Mr. González:

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# 647884 (BPUB# GPFY16-17:42).

The Brownsville Public Utilities Board (the "board"), which you represent, received a request for: (1) the amount paid to a specified third party; (2) the amount collected pursuant to a specified rate increase; (3) the expenditures of funds collected pursuant to the specified rate increase; and (4) a specified memorandum of understanding. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.133 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Tenaska Brownsville Partners LLC ("Tenaska"). Accordingly, you state, and provide documentation showing, you notified Tenaska of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Tenaska. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have indicated a portion of the submitted information as not responsive to the instant request for information. This ruling does not address the public availability of

non-responsive information, and the city need not release non-responsive information to the requestor.

Next, we note Tenaska seeks to withhold information not submitted to this office by the board. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the board, this ruling does not address this information and is limited to the information submitted as responsive by the board.

Next, you state Exhibit B was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-06204 (2013). In that ruling, we determined the board must withhold the information at issue under section 552.133 of the Government Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the board must continue to rely on Open Records Letter No. 2013-06204 as a previous determination and withhold Exhibit B in accordance with that ruling.<sup>1</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address the submitted arguments for the remaining submitted information not subject to Open Records Letter No. 2013-06204.

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.

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>2</sup>We note the remaining 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).

(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;

(D) risk management information, contracts, and strategies, including fuel hedging and storage;

(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; 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). We note section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *See id.* § 552.133(a-1)(2).

We understand the board is a municipally owned utility for purposes of section 552.133. You seek to withhold the remaining responsive information under section 552.133(b). 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 remaining responsive information relates to a competitive matter as defined by section 552.133(a-1). *See id.* § 552.133(a-1)(1)(A)-(F).

Thus, the board must withhold the remaining responsive information under section 552.133 of the Government Code.<sup>3</sup>

In summary, the board must continue to rely on Open Records Letter No. 2013-06204 as a previous determination and withhold Exhibit B in accordance with that ruling and must withhold the remaining responsive information under section 552.133 of the Government Code.

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/sdk

Ref: ID# 647884

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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