



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2019

Mr. Zachary Brown
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2019-34098

Dear Mr. Brown:

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# 800032 (PIR# X003917).

The City of Austin (the "city") received a request for twenty-three categories of information related to the provision of chilled water services created during a specified time period. You state you will release some information to the requestor. You claim some of the responsive information is subject to previous rulings. You further claim the submitted information is excepted from disclosure under section 552.133 of the Government Code.¹ We have considered your arguments and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address the requestor's contention that information believed to be similar or identical to the submitted information has already been made public. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member

¹ Although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

² We 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 that submitted to this office.

of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, as section 552.133 of the Government Code makes information confidential, we will consider the applicability of this exception to the information at issue.

Next, you state some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2016-11776 (2016) and 2018-23750A (2018). In those rulings we determined the city must withhold the information at issue under section 552.133 of the Government Code. We understand there has been no change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office in Open Records Letter Nos. 2016-11776 and 2018-23750A, the city must rely on these prior rulings as previous determinations and withhold the identical information in accordance with those rulings. *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 that information is or is not excepted from disclosure). However, to the extent the submitted information was not at issue in the prior rulings, we will address your argument against disclosure of that 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:

(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, and we agree, the city's municipally-owned electric utility, Austin Energy, is a public power entity for purposes of section 552.133. You inform us the submitted information pertains to "[t]he district cooling program" which is "a service open to public competition." You state the submitted information consists of "Chilled Water Services Agreements and corresponding information, data, and analyses . . . related to the cost structure and income under the agreements[.]" You further explain if this information is released it would place Austin Energy at a competitive disadvantage and cause financial harm to Austin Energy. You state the submitted information 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 submitted information relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude the city must withhold the submitted information under section 552.133 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office in Open Records Letter Nos. 2016-11776 and 2018-23750A; the city must rely on these prior rulings as previous determinations and withhold the identical information in accordance with those rulings. The city must withhold the submitted 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

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Mr. Zachary Brown - Page 4

Ref: ID# 800032

Enc. Submitted documents

c: Requestor
(w/o enclosures)