



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2020

Ms. Skye Masson
First Assistant City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2020-09281

Dear Ms. Masson:

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# 818597 (ORR: G009466-010320).

The City of Georgetown (the "city") received a request for specified contracts. The city states it is releasing some of the requested information. The city claims the submitted information is excepted from disclosure under section 552.133 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of EDF Renewables, Inc., f/k/a EDF Renewable Energy, Inc. ("EDFR") and Buckthorn Westex, L.L.C. ("Buckthorn"). Accordingly, the city states, and provides documentation showing, it notified the third parties of the request for information and of the 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 EDFR and Buckthorn. We have considered the submitted arguments 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:

- (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:

(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; [and]

(D) risk management information, contracts, and strategies, including fuel hedging and storage[.]

Id. § 552.133(a), (a-1)(1)(A)-(D). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). The city states Georgetown Utility Systems provides electric utility services and is governed by the Georgetown City Council. Thus, the city is a municipally-owned public power entity for purposes of section 552.133. The city asserts the submitted information relates to the bidding and pricing information for purchased solar power to be delivered to the city which relates to section 552.133(a-1)(1)(A)-(D). Additionally, the city states the power purchase agreement also relates to the delivery and facilities related to purchased solar power, as well as risk management strategies relating to future generation and the financial arrangements for such strategies. Further, the city states 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). *See id.* Based on these representations and our review, we find the information at issue 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.¹

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.

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/jlbm

Ref: ID# 818597

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)