



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2020

Ms. Maria Angela Flores Beck
Counsel for the City of Flatonia
P. O. Box 10
La Grange, Texas 78945-0010

OR2020-30465

Dear Ms. Beck:

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# 856316.

The City of Flatonia (the "city"), which you represent, received a request for a specified contract.¹ You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.133 of the Government Code.² Additionally, you state release of the information at issue may implicate the interests of the Lower Colorado River Authority (the "LCRA"). Accordingly, you state, and provide documentation demonstrating, the city notified the LCRA of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have received comments from the LCRA. We have considered the submitted arguments and reviewed the submitted information.

¹ You state, and provide documentation demonstrating, the city received clarification of the information requested. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² 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 Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Initially, we note some of the submitted information is not responsive to the present request because it does not consist of the requested contract. This ruling does not address the public availability of the non-responsive information, which we marked, and the city need not release it in response to this request.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." *Id.* § 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.

(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 agreements 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). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). The LCRA states it is authorized to “develop and generate water power and electric energy within the boundaries of the district and to distribute and sell . . . electric energy[.]” Thus, the LCRA states it is a public power utility for the purposes of section 552.133. The LCRA asserts the requested information pertains to competitive matters of the LCRA specifically identified by section 552.133(a-1)(1). Further, the LCRA 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). Based on these representations and our review, we find the responsive information relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude the city must withhold the responsive information under section 552.133 of the Government Code.³

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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/be

Ref: ID# 856316

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)

³As our ruling is dispositive, we need not address the LCRA’s remaining arguments against disclosure of this information.