



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2020

Ms. Ingrid Gunter
Coordinator/Paralegal
Lewisville Independent School District
P.O. Box 217
Lewisville, Texas 75067

OR2020-31492

Dear Ms. Gunter:

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# 858880 (ORR 2021-039).

The Lewisville Independent School District (the "district") received a request for the following information pertaining to specified district buildings: (1) the square footage, (2) energy standard for construction, and (3) natural gas and electricity usage during a specified time period. You claim the submitted information is excepted from disclosure under section 552.133 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Atmos Energy Corporation, Cavallo Energy Texas, and CoServe Electric of the request for information and of their 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 considered the exception you claim and reviewed the submitted information.

Initially, we note you only submitted the requested natural gas and electricity usage information for our review. Thus, to the extent any information responsive to the request for square footage and energy standard for construction of the specified district buildings existed when the present request was received, we assume it has been released. If such

information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the notified third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the notified third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the district may not withhold any of the information at issue on the basis of any proprietary interest the notified third parties may have in it.

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:

(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.

Id. § 552.133(a). Section 552.133 only protects the competitive interest of a public power utility. *See* Open Records Decision No. 666 at 2 (2000) (statutory predecessor to section 552.133 enacted to protect municipally owned utilities from public disclosure of competitive matters). We understand the district contracts with the private companies for its electric services. However, the district does not inform us it owns or operates a public power utility. Thus, we find the district has failed to demonstrate the applicability of section 552.133 to the submitted information. Accordingly, the district may not withhold any of the submitted information under section 552.133 of the Government Code. The district must release the submitted 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 <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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 858880

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)