



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 2, 2022

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

OR2022-03106

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# 929480 (ORR# C118265).

The City of Austin (the "city") received a request for information pertaining to specified power-purchase agreements. The city states it is withholding some of the requested information in accordance with Open Records Letter No. 2016-11776 (2016) and 2018-23750A (2018). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The city also states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.133 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>1</sup>

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, 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> 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.

(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:

...

(C) effective fuel and purchased power agreements and fuel transportation arrangements and contracts[.]

*Id.* § 552.133(a), (a-1)(1)(C). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). The city informs us it owns and operates Austin Energy, a public electric utility for purposes of section 552.133. The city asserts the submitted information pertains to the public electric utility’s competitive activity specifically identified by subsection 552.133(a-1)(1)(C). The city also states 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). *See id.* Based on these representations, we find the information at issue relates to competitive matters as defined by section 552.133(a-1). Thus, 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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)