



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2022

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

OR2022-33928

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# 981519 (ORR# X011302).

The City of Austin (the "city") received a request for information pertaining to the city's communications with a specified company.¹ The city 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.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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:

¹The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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.

(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; [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)(A)-(B), (F). 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 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 city states it is a public power utility for purposes of section 552.133. The city asserts the submitted information pertains to competitive activity specifically identified by subsection 552.133(a-1)(1). 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

JLC/eb

Ref: ID# 981519

Enc. Submitted documents

c: Requestor
(w/o enclosures)