



January 23, 2001

Mr. Howard D. Bye  
Matthews and Branscomb  
112 East Pecan, Suite 1100  
San Antonio, Texas 78205

OR2001-0248

Dear Mr. Bye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143563.

The City Public Service Board of the City of San Antonio ("CPS"), which you represent, received a request for the amount of money CPS spent on advertising in the three most recent completed fiscal years, including the names and figures for ad agency fees, payments to media outlets by name, and payments to named firms or individuals other than employees for production of print and electronic advertising. The requestor also wants the name of any outside public relations firm and any payments for the most recent completed fiscal years and descriptions of in-house public relations operations. You indicate that CPS has released responsive information with the exception of "payments to media outlets by name." You claim that "payments to media outlets by name" are excepted from disclosure under sections 552.104 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.131, as added by Senate Bill 7,<sup>2</sup> excepts from disclosure a public power utility's information related to a competitive matter. The exception defines "competitive matter" as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity. The governing body must also, in like manner, determine that the release of the information would give an advantage to competitors or prospective competitors. Section 552.131(a)(3) lists thirteen categories of information that may not be deemed competitive matters. The attorney general may

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<sup>1</sup>In reaching our conclusion here, we assume that 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 that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>Act of May 27, 1999, 76th Leg., R.S., ch. 405, § 46 (codified at Gov't Code § 552.131).

conclude that section 552.131 is inapplicable to the requested information only if, based on the information provided, the attorney general determines the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. Gov't Code § 552.131(c). Further, section 552.131(b) provides:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. *Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter*, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.131(b) (emphasis added).

The CPS Board, which is a "public power utility governing body," passed a resolution by vote pursuant to section 552.131 in which it determined that information regarding sales and promotion strategies including advertising campaigns was a competitive matter, which, if disclosed, would provide an advantage to existing or prospective competitors. We note that the submitted information contains a figure for "total media buy." See Gov't Code § 552.131(a)(3)(E) (providing that aggregate information reflecting the receipts or expenditures of funds of the public power utility, of the type that would be included in audited financial statements, are exempt from the definition of competitive matters). Based on your representation that the customer information is not included among the list of matters expressly excluded from the definition of competitive matters, we agree that the "payments to media outlets by name" are competitive matters in accordance with the city's resolution and, therefore, are excepted from disclosure pursuant to section 552.131. Because section 552.131 is dispositive, we need not address section 552.104.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

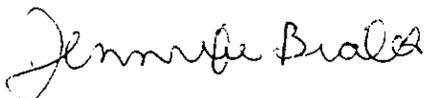
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/er

Ref: ID# 143563

Encl: Submitted documents

cc: Mr. Robert Moseley  
San Antonio Monitor  
P.O. Box 6994  
San Antonio, Texas 78209  
(w/o enclosures)