



May 16, 2001

Ms. Zandra L. Narvaez
Attorney
City Public Service of San Antonio, Texas
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2001-2019

Dear Ms. Narvaez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID#s 147270, 147803 and 147804.

The City Public Service Board of the City of San Antonio (the "CPS") received three requests for information. The first request is for "a report, in as much detail as it's [sic] reasonable to accumulate, of CPS payments to the San Antonio Express-News from August 1994 to August 1999 - along with copies of any contracts under which those payments were made." You state that no contracts or reports responsive to the request exist. You claim that responsive information concerning CPS payments to the San Antonio Express-News is excepted from disclosure under sections 552.131 and 552.104 of the Government Code.

The second request was for three items of information. You state that CPS has released to the requestor information that is responsive to items 1 and 3. As for the information responsive to the second item, you state that no contracts exist and that information concerning payments made to the San Antonio Express-News, the same information at issue in the first request, is excepted from disclosure based on sections 552.104 and 552.131.

The third request is for "comprehensive information regarding the current advertising campaign on deregulation" and specifies various categories of information included in the request. You again seek to withhold the requested information based on sections 552.104 and 552.131 of the Government Code.

You have submitted representative samples of the information CPS seeks to withhold from disclosure.¹ We have reviewed those samples and considered CPS's arguments as well as the comments of the requestor.

Section 552.131 exempts 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 determine in good faith 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 conclude that section 552.131 is inapplicable to the requested information only if, based on the information provided, the attorney general determines that 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).

You inform us that 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 various categories of information are competitive matters. You aver that the information at issue fits into one such category, which concerns sales and promotion strategies, plans and budgets, both historical and forecast.

We have no information that would allow us to conclude that CPS has failed to act in good faith in determining that the information is a competitive matter or that the information is not reasonably related to competitive matters. Based on your representation that the payment information is not included among the list of matters expressly excluded from the definition of competitive matters, we agree that the documents at issue are competitive matters in accordance with the CPS resolution. Therefore, we conclude that section 552.131 exempts the information from required public disclosure. In light of this conclusion, we need not address your section 552.104 claim.

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

¹In 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.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/LM/seg

Ref: ID#s 147270, 147803, 147804

Encl. Submitted documents

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