



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2004

Ms. Zandra L. Pulis
Legal Services Division
City Public Service of San Antonio, Texas
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2004-9073

Dear Ms. Pulis:

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# 211530.

City Public Service of the City of San Antonio, Texas ("CPS") received a request for information regarding recently offered retirement buyouts and the document that details a specific individual's retirement deal. You state that you have provided the requestor with some of the requested information. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.133 of the Government Code. We have also received comments from the individual whose information is at issue. *See* Gov't Code § 552.304 (permitting interested party to submit comments explaining why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information related to a competitive matter. Section 552.133(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 § 552.133(b). Section 552.133(a)(3) defines a "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, and the release of which would give an advantage to competitors or prospective competitors. However, section 552.133(a)(3) also provides thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.133 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 § 552.133(c).

CPS informs us that "[t]he CPS Board of Trustees, acting pursuant to section 552.133 of [the] Act, passed a resolution determining in good faith that certain types of information are 'competitive matters.'" CPS states in its brief that "[s]ection III of the resolution provides that executive pay and perquisites are competitively sensitive." CPS has submitted a copy of the resolution for our review. Additionally, CPS argues that the submitted information "is reasonably related to a competitive matter and if released, would give a competitor or prospective competitor an unfair advantage by providing insight into competitive business policies that are currently being used by and that are acceptable to CPS." After reviewing CPS's arguments and the submitted information, we conclude that, following the definitions in the resolution, this information is reasonably related to a competitive matter. The requested information is not among the thirteen categories of information expressly exempted from the definition of competitive matter, and based on the information provided in connection with this request, we cannot conclude that CPS failed to act in good faith. Consequently, we agree that the information requested is a competitive matter in accordance with CPS's resolution and, therefore, is excepted from disclosure pursuant to section 552.133.¹

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

¹ Because our ruling is dispositive, we need not address any of the remaining arguments against disclosure.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 211530

Enc. Submitted documents

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