



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2006

Ms. Zandra L. Pulis
Senior Counsel
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2006-07934

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# 254996.

The City Public Service of the City of San Antonio ("CPS") received a request for "the internal audit department position descriptions," the "salary ranges . . . and the Incentive Comp EIP percentages/ranges for these positions[,] and "the number of internal audit staff authorized as of this month." You state that some of the requested information has been released but claim that the submitted information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you contend that the request is not a proper request under the Act because the requestor seeks this information as part of a "salary survey." You reason that this request amounts to a series of questions presented to CPS. *See* Open Records Decision No. 347 (1982) (the Act does not require governmental body to answer factual questions). We note, however, that this request seeks specific information. Therefore, this request is subject to the Act and we will address your arguments against the disclosure of 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 as follows:

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). A "competitive matter" is defined 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. *Id.* § 552.133(a)(3). Section 552.133(a)(3) lists 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. *Id.* § 552.133(c).

You state that the CPS board of trustees passed a competitive resolution by vote pursuant to section 552.133 in which it defined certain employee hiring and salary information to be within the scope of the term "competitive matter." In pertinent part, this resolution provides that the "[n]ames, home addresses and telephone numbers, positions, years of service, and any other information that can identify a particular individual or position and the applicable compensation, including perquisites," are competitive matters excepted under section 552.133. You state that the submitted information, which consists of compensation information related to particular CPS positions, is reasonably related to a competitive matter as defined by the resolution at issue. We note that the submitted information is not clearly among the thirteen categories of information that section 552.133 expressly excludes from the definition of competitive matter. *See id.* § 552.133(a)(3). After reviewing CPS's arguments and the submitted information, we cannot conclude that CPS failed to act in good faith. *See id.* § 552.133(c). Furthermore, we conclude that this information is reasonably related to a competitive matter as defined by the resolution at issue. Therefore, based on your representations and our review, we conclude that CPS must withhold the submitted information under section 552.133 of the Government Code.

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).

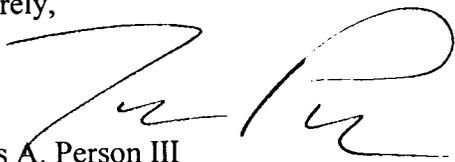
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 254996

Enc. Submitted documents

c: Ms. Pat Major
(c/o)Zandra L. Pulis
Senior Counsel
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296
(w/o enclosures)