



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 15, 2007

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

OR2007-10457

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# 286608.

City Public Service of San Antonio ("CPS") received a request for the Bid Tabulation for Temporary Customer Service Representatives. You claim that the requested information is excepted from disclosure under section 552.133 of the Government Code. You also claim that release of the requested information may implicate the proprietary interests of third parties. Pursuant to section 552.305 of the Government Code, you are required to notify third parties of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

Initially, we must address CPS's obligations under section 552.301 of the Government Code. In accordance with section 552.301(b), a governmental body seeking a ruling from this office must assert the exceptions to disclosure that apply to the requested information no later than the tenth business day after receiving the written request. You state that CPS received the present request for information on May 23, 2007. You requested a ruling from this office on June 7, 2007. You do not indicate that CPS was closed for business during this

time period. By seeking a ruling after the ten business day deadline CPS failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Because section 552.133 of the Government Code and third party interests can provide compelling reasons to withhold information from the public, we will consider whether CPS is required to withhold the submitted information.

Section 552.133 of the Government Code excepts from public disclosure information held by a public power utility that is related to a competitive matter. *See* Gov't Code § 552.133(b). "Competitive matter" is defined as a matter that the public power utility governing body in good faith determines by vote to be related to the utility's competitive activity. *Id.* § 552.133(a)(3). The governing body also must determine, in like manner, that the release of the information would give an advantage to competitors or prospective competitors. *Id.* Section 552.133(a)(3) lists thirteen categories of information that may not be deemed to be competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the information at issue 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. *Id.* § 552.133(c). Furthermore, section 552.133(b) provides as follows:

Information or records are excepted from [required public disclosure] 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.

*Id.* § 552.133(b). You inform us that CPS is a public power utility for purposes of section 552.133. You assert that the submitted information relates to the evaluation of submitted proposals for the provision of temporary customer service representative staff. You assert that this information relates to a competitive matter and, if released, would give a competitor or prospective competitor an unfair advantage by gaining access to current CPS Energy labor cost information. You have provided a copy of CPS Energy's Competitive Resolution and Competitive Matters Policy, adopted by CPS's board of trustees that delineates categories of information that have been determined to be competitive matters for purposes of section 552.133. You assert that the information at issue falls within the scope of the board's description of competitive matters as a contract for shared services. We note that the information at issue is not clearly among the types of information that section 552.133(a)(3) expressly excludes from the definition of a competitive matter. Based on the information provided in connection with this request, we cannot conclude that CPS has 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, the submitted resolution, and our review of the submitted information, we conclude that this information is excepted from public disclosure under section 552.133 of the Government Code.<sup>1</sup>

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,

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<sup>1</sup>As our ruling is dispositive, we need not address EuroSoft's arguments.

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,



M. Alan Akin  
Assistant Attorney General  
Open Records Division

MAA/mcf

Ref: ID# 286608

Enc. Submitted documents

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