



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2007

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

OR2007-13375

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# 291526.

The City Public Service Board for the City of San Antonio d/b/a/ CPS Energy ("CPS") received a request for records pertaining to "what each landowner was paid for their property on the Cagnon-Lytle project." You claim that the requested information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under

section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. *See* Open Records Decision No. 310 (1982). However, the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office has concluded that information about specific parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *See* Open Records Decision No. 564 at 2 (1990). A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* Open Records Decision No. 564 (1990).

You indicate that CPS is in the process of acquiring easements that are required for the Cagnon-Lytle project. You state that some of the easements are still being negotiated and release of the requested information would impair CPS's negotiation position with respect to transactions and condemnation proceedings that are still pending. Based on your representations and our review of the submitted information, we conclude that CPS may withhold the submitted information under section 552.105 of the Government Code.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 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/jb

Ref: ID# 291526

Enc. Submitted documents

c: Mr. Floyd Santleben, Jr.
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San Antonio, Texas 78261
(w/o enclosures)