



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 9, 2008

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

OR2008-00475

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# 299107.

The City of San Antonio's City Public Service Board (the "board") received a request for "any and all billing information and/or service applications" for four named customers and three specified addresses during specified time periods.<sup>1</sup> You claim that the board is authorized to withhold the responsive "service addresses" and "service connection dates" under Open Records Letter No. 2001-0184 (2001). You claim that the remaining submitted information is excepted from disclosure under sections 552.104, 552.130, 552.133,

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<sup>1</sup>You inform this office the requestor has stated his request for "any and all billing information" means "consumption records, disconnect notices, re-connect orders, service tech notes or memorandums, and billing amounts." See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); see also Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

and 552.147 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>3</sup>

We begin by addressing the board's claim that it may withhold some of the responsive information in accordance with the previous determination issued in Open Records Letter No. 2001-0184. That decision authorizes the board to withhold certain information relating to the board's retail customers under section 552.133 of the Government Code without the necessity of again requesting an attorney general decision. The board states that our decision in Open Records Letter No. 2001-0184 is applicable to the customer service addresses and service connection dates that are encompassed by the present request. The board does not inform us of any change in the law, facts and circumstances on which Open Records Letter No. 2001-0184 is based. We therefore agree that the board may withhold the requested customer service addresses and service connection dates in accordance with Open Records Letter No. 2001-0184. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)).

Next, we address the board's claim that the remaining submitted information is excepted under section 552.133 of the Government Code, which 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

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<sup>2</sup>You acknowledge that the board did not raise section 552.130 within the ten-business-day deadline under section 552.301 of the Government Code. *See* Gov't Code §§ 552.301(b), .302. Nevertheless, because section 552.130 is a mandatory exception that may not be waived, we will consider your claim under this exception. *See id.* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Additionally, we note section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

<sup>3</sup>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.

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).

The board informs us that it is a public power utility for purposes of section 552.133. The board also has submitted a copy of a resolution delineating categories of information that the board has determined to be competitive matters for purposes of section 552.133. The board asserts that the remaining submitted information comes within the scope of its resolution and therefore is protected from public disclosure under section 552.133. After review of the board’s arguments and the submitted information, we find that the remaining submitted information is not clearly among the types of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. Furthermore, we have no evidence that the board failed to act in good faith in adopting its resolution under section 552.133. Therefore, based on the board’s representations and its resolution, we conclude that the remaining submitted information is excepted from disclosure under section 552.133 of the Government Code. Because our determination on this issue is dispositive, we need not address your remaining arguments against disclosure.

Finally, you request that this office issue a previous determination that would permit the board in the future to withhold from disclosure service applications, disconnect dates, electric and gas consumption, and billed amounts without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 299107

Enc. Submitted documents

c: Mr. Robert Herrera, Jr.  
8627 London Heights  
San Antonio, Texas 78254  
(w/o enclosures)