



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2008

Ms. Helen Valkavich  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2008-02889

Dear Ms. Valkavich:

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# 303570.

The City of San Antonio (the "city") received a request for "documents relating to the Strategic Energy Plan of CPS Energy ["CPS"], especially as the plan relates to planning and construction of a two-reactor addition to the South Texas Project nuclear plant as developed by the CPS Nuclear Expansion Analysis Team." You state that some responsive information will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.107, 552.111, and 552.133 of the Government Code. You also believe that a portion of the submitted information implicates the proprietary interests of an interested third party, CRA International ("CRA"), and you have notified this company of the request for information and its opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). We have considered the exceptions you claim 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 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 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).

The city informs us that CPS is a city-owned public power utility for purposes of section 552.133. The city has also submitted a copy of CPS's competitive matters policy delineating categories of information that the board has determined to be competitive matters for purposes of section 552.133. The city asserts that the submitted information comes within the scope of CPS's policy and therefore is protected from public disclosure under section 552.133. After reviewing the city's arguments and the submitted information, we cannot conclude that CPS failed to act in good faith. *See id.* Furthermore, we conclude that this information is reasonably related to a competitive matter as defined by the policy at issue. Therefore, based on your representations and our review, we conclude that the city must withhold the submitted information 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 file suit in

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 303570

Enc. Submitted documents

c: Ms. Vicki Vaughan  
San Antonio Express News  
P.O. Box 2171  
San Antonio, Texas 78297  
(w/o enclosures)

Mr. Paul Gonzales  
City Public Service (CPS)  
P.O. Box 1771  
San Antonio, Texas 78296  
(w/o enclosures)

Mr. Christopher Russo  
CRA International  
50 Church Street  
Cambridge, Massachusetts 20138  
(w/o enclosures)