



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2008

Mr. Paul M. Gonzalez
Senior Counsel - Legal Services Division
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2008-06336

Dear Mr. Gonzalez:

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# 309566.

The City of San Antonio's City Public Service Board (the "board") received a request for a list of current and expired tax exemptions filed with CPS Energy. You state that CPS Energy does not maintain a list of expired sales tax exemptions.¹ You claim that the responsive information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

We begin by addressing the board's claim that it may withhold the responsive information in accordance with the previous determination issued in Open Records Letter No. 2001-0184 (2001). That decision authorizes the board to withhold certain information

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²We 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.

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 list of customer names that is responsive to 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 submitted list of customer names 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)). As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Olivia A. Maceo".

Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/mcf

Ref: ID# 309566

Enc: Submitted documents

c: Mr. Don Morris
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(w/o enclosures)