



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2008

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

OR2008-14961

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#326867.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for information regarding the salaries of eight members of CPS Energy's senior executive team from the 2000 fiscal year to the present. You state that you will release some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.117 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, that CPS Energy failed to comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). 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

¹We 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.

presumption that the information at issue is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.117 and 552.133 are mandatory exceptions to disclosure, we will consider the applicability of these exceptions.

We observe that the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(2) requires disclosure of “the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]” unless the information is expressly confidential under other law. Gov’t Code § 552.022(a)(2). We note that section 552.117 is “other law” for purposes of section 552.022. Furthermore, section 552.133(d) provides that “[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under other law does not apply to information that is excepted from required disclosure under [section 552.133].” *Id.* § 552.133(d). Accordingly, we will consider your arguments under these sections.

You claim that the 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 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). Section 552.133(a)(3) defines a “competitive matter” 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. *See id.* § 552.133(a)(3). Section 552.133(a)(3) provides 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).

You state that CPS Energy is a public power utility for purposes of section 552.133 of the Government Code. You inform us, and provide supporting documentation, that the CPS Energy Board of Trustees (the "board"), as governing body of CPS Energy, passed a resolution by vote pursuant to section 552.133 in which the board defined information considered to be within the scope of the term "competitive matter." You assert that the information at issue comes within the scope of the resolution. The information at issue does not fall within the thirteen categories 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. Consequently, we find that the information at issue relates to a competitive matter in accordance with the submitted resolution. Thus, CPS Energy must withhold the information at issue pursuant to section 552.133 of the Government Code. As our ruling is dispositive, we need not address your remaining argument 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). If the governmental body does not file suit over 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/ma

Ref: ID#326867

Enc. Submitted documents

c: Mr. Greg Harman
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(w/o enclosures)