



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 10, 2009

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

OR2009-07988

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# 345698.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for all information, including correspondence, video recordings, photographs, and associated costs, regarding a specified South Texas Nuclear Plant trip. You state CPS has provided some of the requested information to the requestor. You claim portions of the submitted e-mails are excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert the highlighted portions of the submitted e-mails are excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111

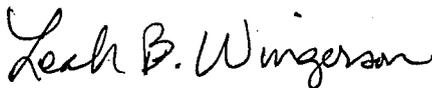
excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. Likewise, section 552.111 does not generally except from disclosure purely factual information severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5.

You argue the submitted e-mails consist of communications between CPS officials regarding CPS's policies related to meeting customers' future energy needs. Based on your arguments, we find you have sufficiently demonstrated how the information contained in the e-mails pertains to CPS's policymaking processes. You contend the information you have highlighted consists of the advice, recommendations, and opinions of the CPS officials regarding the policy issues. Based on your arguments and our review, we find you have established the deliberative process privilege is applicable to some of the highlighted information, which we have marked. Accordingly, CPS may withhold the information we have marked under section 552.111 of the Government Code. You have failed to demonstrate, however, how the remaining highlighted information reveals advice, recommendations, and opinions regarding policymaking issues. Consequently, the remaining highlighted information may not be withheld under section 552.111 of the Government Code. As you have claimed no other exceptions to disclosure for this information, it must be released, along with the remaining information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 345698

Enc. Submitted documents

c: Requestor  
(w/o enclosures)