



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2009

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

OR2009-09821

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# 349308.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for the expenses submitted by CPS Energy governmental relations employees and contract lobbyists for the past two years. You state you have released most of the requested information. You claim that the remaining information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 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 section 552.133 is a mandatory exception to disclosure, we will consider your argument under this exception.

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 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.

Gov't Code § 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).

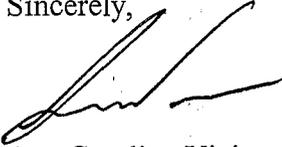
You state that CPS Energy is a public power utility for purposes of section 552.133 of the Government Code. You inform us, and provide supporting documentation, that the CPS Energy Board of Trustees (the "board"), as governing body of CPS Energy, passed a resolution by vote pursuant to section 552.133 in which the board defined information considered to be within the scope of the term "competitive matter." You assert that the information you have highlighted 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 you have highlighted relates to a competitive matter in accordance with the

submitted resolution. Thus, CPS Energy must withhold the information you have highlighted pursuant to section 552.133 of the Government Code.

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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 349308

Enc. Submitted documents

c: Requestor
(w/o enclosures)