



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2009

Mr. Gabriel Garcia
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-13312

Dear Mr. Garcia:

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# 355971.

The City of San Antonio (the "city") received a request for all information over a specified time period, including the final recommendation of the contractor, related to the hiring of a private contractor to examine energy-generation options for the city, particularly the assessment of the cost of nuclear-generated electricity. You state you will release some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.107, 552.111, and 552.133 of the Government Code.¹ CPS Energy ("CPS") has also submitted comments to this office objecting to the release of its information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments 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:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a

¹We note that although you raise sections 552.101 and 552.131 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn these exceptions.

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 utility-related 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). However, section 552.133(a)(3) also 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).

The city informs us that CPS is a city-owned public power utility for purposes of section 552.133. In addition, documentation was provided to this office showing that the CPS Energy Board of Trustees (the "board"), as governing body of CPS, passed a resolution by vote pursuant to section 552.133 in which the board defined the information considered to be within the scope of the term "competitive matter." The city and CPS both assert that the submitted records come within the scope of the resolution. The information at issue is not among 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. *See id.* § 552.133(c). Consequently, we determine that the submitted information relates to competitive matters in accordance with the submitted resolution. Therefore, the city must withhold the submitted information pursuant to section 552.133 of the Government Code.²

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 355971

Enc. Submitted documents

c: Requestor
(w/o enclosures)