



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 8, 2009

Mr. Kipling D. Giles
Senior Counsel
Legal Services Division
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2009-14175

Dear Mr. Giles:

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# 357884.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for three categories of information pertaining to a specified address. You state that you have released some of the requested information. You claim that the submitted 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. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (providing interested party may submit comments stating why information should or should not be released).

Initially, we address CPS's claim it may withhold the responsive information in accordance with the previous determination issued in Open Records Letter No. 2001-0184 (2001). That decision authorizes CPS to withhold certain information relating to CPS's retail customers under section 552.133 of the Government Code without the necessity of again requesting an attorney general decision. CPS states our decision in Open Records Letter No. 2001-0184 is applicable to the name, address, and dates of connection or service of CPS customers. CPS informs us there has been no change in the law, facts and circumstances on which Open Records Letter No. 2001-0184 is based. We therefore agree CPS may withhold the name,

address, and dates of connection or service of the CPS customer 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)). However, we will address your argument under section 552.133 for the remaining information not subject to the previous determination.

Section 552.133 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 [required public disclosure] 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. *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 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).

CPS is a public power utility for purposes of section 552.133. You inform us, and provide documentation showing, the CPS 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." You assert the submitted information comes within the scope of specified provisions within the resolution. Upon review, we find that the remaining information at issue is not clearly among the types of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. Furthermore, we have no evidence that CPS failed to act in good faith in adopting its resolution under section 552.133. Therefore, based on CPS's

representations and its resolution, we conclude that the remaining information is excepted from disclosure under 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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 357884

Enc. Submitted documents

cc: Requestor
(w/o enclosures)