



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 11, 2010

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

OR2010-03536

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# 373891.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received requests for the severance packages for two former CPS employees. You state one former employee does not object to the release of his severance agreement, which you have released. Although you state CPS takes no position regarding the requested disclosure of the submitted severance agreement, you state the agreement may contain proprietary third-party information subject to exception under the Act. You also state, and provide documentation showing, that you notified the other former employee of the request and of his opportunity to submit comments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted severance agreement. We have received and considered comments submitted by the former employee.

The former employee asserts his severance agreement should be withheld under section 552.102 of the Government Code. Section 552.102 excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee’s employment and its terms constitutes information relevant to person’s employment relationship and is part of employee’s personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, *writ ref’d n.r.e.*), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the common-law privacy test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976).

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Having reviewing the submitted severance agreement, we conclude it pertains solely to the resignation of a public employee. This office has stated in numerous opinions that the public has a legitimate interest in knowing the reasons for the dismissal of public employees and the circumstances surrounding their resignation. Open Records Decision No. 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal or resignation of public employees); *see* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, because the submitted severance agreement is of legitimate public interest, it may not be withheld under section 552.102.

The former employee also raises section 552.133 of the Government Code. However, CPS does not seek to withhold the requested information under section 552.133. Section 552.133 only protects the competitive interest of a public power utility. This exception does not protect the interests of third parties. *See* Open Records Decision No. 666 at 2 (2000) (section 552.133 enacted to protect municipally owned utilities from public disclosure of competitive matters). As CPS does not raise section 552.133, we have no basis to determine section 552.133 is applicable to the requested information. Thus, we conclude the submitted severance agreement must be released.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Mack T. Harrison", written in a cursive style.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 373891

Enc. Submitted documents

c: Requestors (2)  
(w/o enclosures)

cc: Mr. Robert K. Temple  
Robert K. Temple, Esq.  
215 East Hermosa Drive  
San Antonio, Texas 78212  
(w/o enclosures)