



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2010

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

OR2010-04264

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# 374515.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for four categories of information related to the South Texas Project expansion for a specified time period. You state that some responsive information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that one of the submitted documents, which we have marked, is not responsive to the instant request for information because it was created after the date CPS received the request. This ruling will not address the non-responsive information, and CPS need not release it in response to this request.

Next, you inform us that some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2010-01202 (2010), 2010-00349 (2010), and 2009-18050 (2009). In each of these

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

rulings, we determined CPS must withhold the information at issue pursuant to section 552.133 of the Government Code. To the extent any portion of the responsive information was ruled upon in Open Records Letter Nos. 2010-01202, 2010-00349, and 2009-18050, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, CPS must continue to rely on Open Records Letter Nos. 2010-01202, 2010-00349, and 2009-18050 as previous determinations and withhold the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the responsive information is not encompassed by the previous rulings, we will consider the submitted arguments.

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 [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 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 responsive information is excepted from disclosure under section 552.133 of the Government Code. As our ruling is dispositive, we do not address your remaining argument.

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# 374515

Enc. Submitted documents

cc: Requestor
(w/o enclosures)