



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2010

Ms. Helen Valkavich  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2010-05737

Dear Ms. Valkavich:

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# 378275 (COSA File No. 10-0250).

The City of San Antonio (the "city") received a request for a specified document which was referred to by a named councilman as the basis for an energy rate increase. Although the city takes no position with respect to the public availability of the submitted information, you state you have notified the City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") of the request for information and we have received comments from CPS contending the submitted information is excepted under sections 552.104 and 552.133 of the Government Code. *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 [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.

*Id.* § 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, 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. *See id.* 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 the issue, matter, or activity is a competitive matter or the information requested is not reasonably related to a competitive matter. *Id.* § 552.133(c).

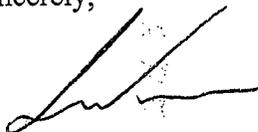
CPS is a public power utility for purposes of section 552.133. CPS informs us, and provides documentation showing, the CPS Board of Trustees (the “board”), as governing body of CPS, passed a resolution by vote pursuant to section 552.133 in which the board defined the information considered to be within the scope of the term “competitive matter.” CPS asserts the submitted information comes within the scope of specified provisions within the resolution. Upon review, we find the submitted information 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 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 the submitted information is excepted from disclosure under section 552.133. As our ruling is dispositive, we do not address CPS’s 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 378275

Enc. Submitted documents

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