



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2010

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

OR2010-17969

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# 401515.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for information concerning (1) top customers from 2000 through the date of the request, (2) top-paid employees, (3) certain expenditures, (4) certain correspondence between CPS and specified entities, and (5) budget information. You state that items two through five have been released. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, you state that, as to item one, CPS did not maintain such information prior to 2008. We note that the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

As to the remaining requested information, we address your argument against disclosure under section 552.133 of the Government Code. This section provides, in relevant part:

(b) 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). A "competitive matter" is defined as a utility-related matter that (1) the public power utility governing body determines by vote in good faith to be related to the public power utility's competitive activity, and (2) the release of which would give an advantage to current or prospective competitors. *Id.* § 552.133(a)(3). Section 552.133(a)(3) lists 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 that either (1) the public power utility governing body did not act in good faith in determining that the issue is a competitive matter, or (2) 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, 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 determined that "[a]ll information regarding retail customers" is within the scope of the term "competitive matter" due to its degree of usefulness to current and potential competitors. You assert that the submitted information, regarding the identity and usage of top customers over a specified period, comes within the scope of the board's resolution. We have no evidence that the board failed to act in good faith in adopting this resolution. The submitted information is not among the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. Consequently, we determine that the submitted information relates to a competitive matter in accordance with the submitted resolution. Therefore, CPS must withhold the submitted information pursuant to section 552.133 of the Government Code. As our ruling is dispositive, we do not address your remaining argument against disclosure.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID# 401515

Enc. Submitted documents

c: Requestor
(w/o enclosures)