



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2012

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

OR2012-10903

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# 458887.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for the most recent billing information for nonresidential electric customers, including customer billing names, billing addresses, service addresses, and bill amounts. 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 representative sample of information.¹

Initially, you inform us the submitted information was subject to a previous determination issued by this office in Open Records Letter No. 2001-0184 (2001). This previous determination permitted CPS to withhold certain information, including the names and addresses of CPS's customers, under section 552.131 of the Government Code without requesting a decision from this office. However, as you acknowledge, the law on which Open Records Letter No. 2001-0184 was based has changed, and CPS may no longer rely on it as a previous determination. See Open Records Decision No. 673 (2001) (listing

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

elements of second type of previous determination under section 552.301(a)). Therefore, we will address CPS's argument against disclosure of the submitted information.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). Section 552.133 provides in relevant part:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

Id. § 552.133(a), (a-1)(1)(F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2).

You state CPS is a municipally-owned electric utility and is a public power utility subject to section 552.133. You assert the submitted information pertains to CPS's competitive activity, specifically identified by subsection 552.133(a-1)(1)(F). We note the information at issue is not among the fifteen categories of information expressly excluded from the definition of "competitive matter" by section 552.133(a-1)(2). Based on your representations and our review, we find the submitted customer billing information relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude CPS must withhold the submitted information, which consists of customer billing names, billing addresses, service addresses, and bill amounts, under section 552.133 of the Government Code.

You ask this office to issue a new previous determination that would permit CPS to withhold certain customer information under section 552.133 of the Government Code without the necessity of requesting a decision from this office. After due consideration, we have decided to grant your request. Accordingly, this letter ruling shall serve as a previous determination allowing CPS to withhold the following information regarding its customers: names, billing addresses, service addresses, and bill amounts under section 552.133(b) of the Government

Code. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, CPS need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,

A handwritten signature in black ink, appearing to read "Jeffrey W. Giles". The signature is fluid and cursive, written over a white background.

Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 458887

Enc. Submitted documents

c: Requestor
(w/o enclosures)