



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 4, 2012

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

OR2012-19459

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# 473649.

City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received multiple requests from the same requestor for specified categories of information related to applicants for a certain position at CPS, including information pertaining to certain CPS employees. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert the requestor has asked CPS, in part, to answer questions and create information in response to his requests. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume CPS has made a good faith effort to do so.

Next, we note section 552.022 of the Government Code is applicable to some of the submitted information. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(1), (2), (15). Exhibit 14 contains completed evaluations, which we have marked, that are subject to section 552.022(a)(1). *See id.* § 552.022(a)(1). Section 552.022(a)(2) is applicable to the following information in the submitted documents: the names of the CPS employees in Exhibits 1 through 3 and 6 through 9; the job titles of the employees in Exhibits 6 and 9; and the dates of employment of the employees in Exhibits 11 and 14. *See id.* § 552.022(a)(2). Exhibits 8 and 10 also contain job descriptions, which we have marked. These job descriptions are subject to section 552.022(a)(15) if CPS considers them to be open to the public under its policies. *See id.* § 552.022(a)(15). Although you assert the information subject to section 552.022 is excepted from disclosure under section 552.103, this section is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, CPS may not withhold any of the information subject to section 552.022 under section 552.103. Accordingly, CPS must release the following information: the completed evaluations we have marked under section 552.022(a)(1) of the Government Code; the names of the CPS employees in Exhibits 1 through 3 and 6 through 9, the job titles of the employees in Exhibits 6 and 9, and the dates of employment of the employees in Exhibits 11 and 14 under section 552.022(a)(2) of the Government Code; and the job descriptions we have marked under section 552.022(a)(15) of the Government Code if CPS considers them to be open to the public under its policies.

You assert the remaining information is excepted from disclosure under section 552.103 of the Government Code, which provides in part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

This office has stated a pending complaint with the Equal Employment Opportunity Commission (the "EEOC") indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). You have submitted information to this office showing that, prior to CPS's receipt of the request for information, the requestor filed a complaint against CPS with the EEOC. Based on your representations and our review of the submitted documents, we find you have demonstrated litigation was reasonably anticipated when CPS received the request for information. Our review of the information at issue also shows it is related to the anticipated litigation for purposes of section 552.103(a). Thus, CPS may withhold the remaining information under section 552.103.

We note, however, once the information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

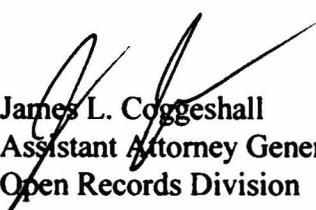
To conclude, CPS must release the following information: the completed evaluations we have marked under section 552.022(a)(1) of the Government Code; the names of the CPS employees in Exhibits 1 through 3 and 6 through 9, the job titles of the employees in

Exhibits 6 and 9, and the dates of employment of the employees in Exhibits 11 and 14 under section 552.022(a)(2) of the Government Code; and the job descriptions we have marked under section 552.022(a)(15) of the Government Code if CPS considers them to be open to the public under its policies. CPS may withhold the remaining information under section 552.103 of the Government Code.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 473649

Enc. Submitted documents

c: Requestor  
(w/o enclosures)