



January 18, 2001

Mr. Howard Bye
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OR2001-0184

Dear Mr. Bye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143335.

The City Public Service Board of the City of San Antonio ("CPS"), which you represent, received various requests for information relating to its customers. CPS received two types of requests for information—broad requests in which the requestor seeks all information regarding named customers and narrow requests in which the requestor seeks a specific category or categories of information. The specific categories of information included the names, addresses, phone numbers, dates of birth, social security numbers, driver's license numbers, places of employment, employers' addresses, employers' phone numbers, family information, roommate information, and dates of connection or service of CPS's customers. You have not informed us of any other specific types of information regarding CPS customers that CPS possesses. Without knowing what other types of information may exist and without being able to review such information, we are unable to determine whether the asserted exceptions would apply to the information. Therefore, we limit our ruling to those specific categories of information delineated above. You claim that this information is excepted from disclosure under sections 552.101, 552.104, 552.110, 552.130, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131, as added by Senate Bill 7,¹ excepts from disclosure a public power utility's information related to a competitive matter. The exception defines "competitive matter" as a matter the public power utility governing body in good faith determines by vote to be

¹Act of May 27, 1999, 76th Leg., R.S., ch. 405, § 46 (codified at Gov't Code § 552.131).

related to the public power utility's competitive activity. The governing body must also, in like manner, determine that the release of the information would give an advantage to competitors or prospective competitors. Section 552.131(a)(3) lists thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.131 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. Gov't Code § 552.131(c). Further, section 552.131(b) provides:

Information or records are excepted from the requirements of Section 552.021 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 § 552.131(b) (emphasis added).

CPS passed a resolution by vote pursuant to section 552.131 in which it determined that “[a]ll information regarding retail customers” was a competitive matter, which, if disclosed, would provide an advantage to existing or prospective competitors. The requested customer information thus relates to a competitive matter as defined under the CPS resolution. Furthermore, the requested information is not clearly among the thirteen categories of information expressly exempted from the definition of competitive matter and we have no evidence CPS failed to act in good faith. Consequently, we agree that the requested customer information relates to a competitive matter in accordance with CPS's resolution, and therefore, is excepted from disclosure pursuant to section 552.131. We note that CPS received requests for information relating to CPS customers from employees of three different governmental bodies. Generally, a governmental body, such as CPS, may transfer information to another governmental body subject to the Act without violating the confidentiality of the information or waiving exceptions to disclosure. *See* Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); Open Records Decision No. 661 at 3

(1991).² When confidential information is transferred from one governmental body to another, the information remains confidential in the hands of the governmental body to which the information was transferred. *See* Open Records Decision No. 655 at 8 (1997). Based on this finding, we need not reach your remaining arguments for withholding the information.

With regard to future requests to CPS for the names, addresses, phone numbers, dates of birth, social security numbers, driver's license numbers, places of employment, employers' addresses, employers' phone numbers, family information, roommate information, or dates of connection or service of CPS's customers, CPS may consider this ruling to be a previous determination under section 552.301(a) of the Government Code and need not request determinations from this office as long as the resolution deeming all information regarding retail customers to be a competitive matter stays in effect.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

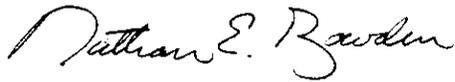
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the General Services Commission at 512/475-2497.

²*But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 at 4-5 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 143335

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