



August 19, 2002

Ms. Zandra Narvaez
Attorney, Legal Services Division
City Public Service of San Antonio
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2002-4556

Dear Ms. Narvaez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167231.

City Public Service of San Antonio (“CPS”) received a request for information relating to “all Texas electric customers paying STATE [sic] sales tax on their ELECTRIC [sic] charge” for a specified billing period, including (1) the customer’s account number, (2) the customer billing name and address, (3) the service address, (4) the electric charge, (5) the demand charge, (6) the gross receipts tax, if any, (7) the public service tax, if any, and (8) the state sales tax, if any. CPS states that the only responsive information that is within its possession or control is information relating to customers of CPS. CPS also informs us that it has no information that is responsive to item numbers 6 and 7. We note that chapter 552 of the Government Code does not require CPS to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). CPS asserts that it is authorized to withhold the information that is responsive to item number 2 of the request under Open Records Letter No. 2001-0184 (2001). CPS claims that the remaining requested information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We have considered the exceptions that CPS raises and have reviewed the submitted representative sample of requested information.¹ We also received comments from the requestor. *See* Gov’t Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes CPS to withhold any responsive information that is substantially different from the submitted information. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We begin by addressing CPS's statement that it has withheld the requested customer billing names and addresses in reliance on Open Records Letter No. 2001-0184 (2001). That decision authorizes CPS to withhold names, addresses, and other information relating to CPS's retail customers under present section 552.133 of the Government Code without the necessity of again requesting an attorney general decision.² CPS indicates that our decision in Open Records Letter No. 2001-0184 (2001) is applicable to the customer billing names and addresses that are encompassed by the present request. CPS does not inform us of any change in the law, facts and circumstances on which Open Records Letter No. 2001-0184 (2001) is based. We therefore agree that CPS may withhold the requested customer billing names and addresses in accordance with Open Records Letter No. 2001-0184 (2001). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (attorney general decision constitutes second type of previous determination under Gov't Code § 552.301(a) where (1) information at issue falls within specific, clearly delineated category of information about which attorney general has previously rendered decision; (2) previous decision is applicable to particular governmental body or type of governmental body from which information is requested; (3) previous decision concludes that specific, clearly delineated category of information is or is not excepted from disclosure; (4) elements of law, fact, and circumstances are met to support previous decision's conclusion that requested information is or is not excepted from disclosure; and (5) previous decision explicitly provides that governmental body or bodies to which decision applies may withhold information without necessity of again seeking attorney general decision).

Next, we address CPS's claim under section 552.133 of the Government Code with respect to the rest of the requested information. Section 552.133 excepts from disclosure information held by a public power utility that is related to a competitive matter. *See* Gov't Code § 552.133(b). Section 552.133 defines "competitive matter" as a matter that the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity. *Id.* § 552.133(a)(3). The governing body must also determine, in like manner, that the release of the information would give an advantage to competitors or prospective competitors. *Id.* Section 552.133(a)(3) lists thirteen categories of information that may not be deemed to be competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the information at issue only if, based on the information provided, the attorney general determines that 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. *Id.* § 552.133(c). Furthermore, section 552.133(b) provides as follows:

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

²The Seventy-seventh Legislature renumbered former section 552.131, "Exception: Public Power Utility Competitive Matters," as section 552.133. The revision was non-substantive. *See* Act of May 22, 2001, 77th Leg., R.S., ch. 1420, § 21.001(52), 2001 Tex. Gen. Laws 3970, 4309 (codified as Gov't Code § 552.133).

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.

CPS informs us that it is a public power utility for purposes of section 552.133. CPS also states that it is operated and managed by the CPS Board of Trustees, a public power utility governing body under section 552.133(a). CPS informs us that pursuant to section 552.133, the CPS board has resolved in good faith by a vote that “[a]ll information regarding retail customers” is related to CPS’s competitive activity and would, if disclosed, give advantage to competitors or prospective competitors of CPS. CPS states that the rest of the requested information “relates to” protected customer information.” We note that the information in question is not clearly among the thirteen categories of information that are expressly excluded from the definition of competitive matter, and we have no evidence that CPS has failed to act in good faith. *See* Gov’t Code § 552.133(a)(3), (c). Thus, we agree that the remaining requested information relates to a competitive matter in accordance with CPS’s resolution and is therefore excepted from disclosure under section 552.133 of the Government Code. As section 552.133 is dispositive, we need not address section 552.104.

In summary, CPS may withhold the requested customer billing names and addresses in accordance with Open Records Letter No. 2001-0184 (2001). The rest of the requested information is excepted from disclosure under section 552.133 of the Government Code.³

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

³CPS asks that we issue a previous determination with respect to this information. *See* Open Records Decision No. 673 (2001). We decline to do so at this time.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

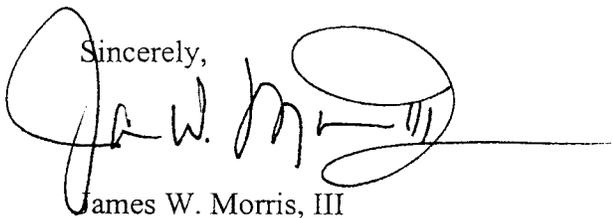
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and "M". A horizontal line extends from the end of the signature to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 167231

Enc: Submitted documents

c: Ms. Susan Vigil
828 Ralph McGill Boulevard, #311
Atlanta, Georgia 30306
(w/o enclosures)