



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2004

Ms. Judy Tokar
City Secretary
City of Helotes
P.O. Box 507
Helotes, Texas 78023

OR2004-1840

Dear Ms. Tokar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197488.

The City of Helotes (the "city") received a request for a mailing list of city residents. You indicate that the city does not seek to raise any exceptions to disclosure for the information on behalf of the city. You advise, however, that the city's electric supplier, City Public Service of San Antonio ("CPS"), which has supplied the requested information to the city, has indicated that the requested information is excepted from disclosure under section 552.133 of the Government Code. *See* Open Records Decision Nos. 667 (2000), 661 (1999) (information may generally be transferred between governmental bodies without violating information's confidential character or waiving exceptions to disclosure of information under Public Information Act). We have reviewed the submitted representative sample of information.¹ We have also reviewed comments submitted by CPS. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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

CPS contends that the requested mailing list is subject to a previous determination this office issued to CPS in Open Records Letter No. 2001-0184 (2001), and thus contends that the city must withhold the requested information. In that ruling, we determined that CPS may withhold certain information regarding retail customers of CPS, including addresses, under section 552.133 without the necessity of requesting a decision from this office. In this case, however, we note that because the present request was made to the city and not to CPS, the information at issue may not be withheld pursuant to the previous determination issued to CPS in Open Records Letter No. 2001-0184 (2001). *See* Open Records Decision No. 673 (2001) (governmental body may rely on ruling as a previous determination when 1) the requested records or information at issue fall within a specific, clearly delineated category of information about which this office has previously rendered a decision; 2) the prior decision is applicable to the governmental body that has received the present request; 3) the prior decision concludes that the specific, clearly delineated category of information is or is not excepted from disclosure under the Public Information Act; 4) the law, facts, and circumstances are met to support the prior decision's conclusion; and 5) the prior decision expressly provides that the governmental body or governmental bodies to which the decision applies may withhold the information without the necessity of again seeking a decision from this office). However, because CPS has submitted arguments explaining why section 552.133 of the Government Code should apply to the requested mailing list, we will address whether the mailing list must be withheld by the city under section 552.133 in this instance.

Section 552.133 excepts information of a public power utility that relates to a competitive matter. Section 552.133(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 § 552.133(b). Section 552.133(a)(3) defines a "competitive matter" as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity, and the release of which would give an advantage to competitors or prospective competitors. However, section 552.133(a)(3) also provides

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 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 § 552.133(c).

CPS informs us that the CPS Board of Trustees passed a resolution by vote pursuant to section 552.133 in which it defined the requested information to be within the scope of the term "competitive matter." 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 that CPS failed to act in good faith. Consequently, we find that the information at issue is within the scope of a competitive matter in accordance with the resolution of the CPS Board of Trustees. We therefore conclude the city must withhold the requested mailing list under section 552.133 of the Government Code.

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 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 Dep't of Pub. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 197488

Enc: Submitted documents

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