ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2006

Ms. Zandra L. Pulis
Senior Counsel
City Public Service Energy of San Antonio
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2006-11819

Dear Ms. Pulis:

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# 261507.

The City Public Service Board of the City of San Antonio ("CPS") received a request for information relating to CPS employees who have over 25 years of service, including their names, home and work addresses, and years of service.[1] You claim that the requested information is excepted from disclosure under sections 552.117 and 552.133 of the Government Code.[2] We have considered the exception you claim and have reviewed the information you submitted.[3]

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[1] We note that the submitted documents, labeled Exhibits B and C, contain information other than the names, home and work addresses, and years of service of employees with more than 25 years of service. Such other types of information are not responsive to this request. This decision does not address the public availability of the non-responsive information.

[2] We note that section 552.024 of the Government Code is not an exception to public disclosure. This section enables an official or employee of a governmental body to request that certain personal information be withheld from the public.

[3] This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes CPS to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Section 552.133 of the Government Code excepts from public disclosure information held by a public power utility that is related to a competitive matter. *See* Gov't Code § 552.133(b). "Competitive matter" is defined as a matter that the public power utility governing body in good faith determines by vote to be related to the utility's competitive activity. *Id.* § 552.133(a)(3). The governing body also must 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 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.

Id. § 552.133(b). You inform us that CPS is a public power utility for purposes of section 552.133. You assert that the requested information is reasonably related to a competitive matter and, if released, would give a competitor or prospective competitor an unfair advantage. You have provided a copy of a resolution adopted by CPS's board of trustees (the "board") that delineates categories of information that have been determined to be competitive matters for purposes of section 552.133. You contend that the requested information falls within the scope of the board's resolution.

We note that the information at issue includes the work addresses of the CPS employees whose information is requested. You do not inform us, and the submitted resolution does not reflect, that the board has determined that an employee's work address is a competitive matter for purposes of section 552.133. *See id.* § 552.133(a)(3). We therefore conclude that CPS may not withhold the employees' work addresses under section 552.133. *See id.* § 552.133(b). With that exception, we find that the information at issue is not clearly among the types of information that section 552.133(a)(3) expressly excludes from the definition of a competitive matter. Based on the information provided in connection with this request, we

cannot conclude that CPS has failed to act in good faith. *See id.* § 552.133(c). Furthermore, we conclude that the remaining information at issue is reasonably related to a competitive matter, as defined by the submitted resolution. Therefore, based on your representations, the resolution, and our review of the information at issue, we conclude that the rest of the requested information is excepted from public disclosure under section 552.133 of the Government Code.

With respect to the employees' work addresses, we note that section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Therefore, because this exception is not applicable to the employees' work addresses, CPS may not withhold that information under section 552.117.

In summary, except for the employees' work addresses, the requested information is excepted from disclosure under section 552.133 of the Government Code. The employees' work addresses must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

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

JWM/sdk

Ref: ID# 261507

Enc: Submitted documents

c: Mr. Phillip Calderon
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(w/o enclosures)