



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 18, 2007

Ms. Zandra L. Pulis  
Senior Counsel, Legal Services Division  
CPS Energy Employee Benefit Trusts  
P.O. Box 1771  
San Antonio, Texas 78296

OR2007-12147

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 #289445.

The CPS Energy Employee Benefit Plan (the "benefit plan") received a request for investment managers' fee information for the benefit plan's pension trust from 2001-2005. You claim that the submitted information is excepted from disclosure under section 552.143 of the Government Code.<sup>1</sup> You also indicate that release of the requested information may implicate the proprietary interests of third parties. Accordingly, you state and provide documentation showing that you notified the interested parties of the request and of their right to submit arguments to this office as to why their information should not be released. See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Public Information Act in certain circumstances). We have considered your submitted arguments and reviewed the submitted information.

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<sup>1</sup>We note that in your letter dated July 19, 2007, you withdrew your assertions under sections 552.104 and 552.133 of the Government Code.

Section 552.143 of the Government Code provides in relevant part the following:

(a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021.

(b) Unless the information has been publicly released, pre- and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

(c) All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), (13)-(16) is confidential and excepted from the requirements of Section 552.021. This Subsection does not apply to a governmental body's purchase, holding, or disposal of, restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This Subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

Gov't Code § 552.143(a)-(c). You state that the submitted spreadsheet was compiled by the benefit plan using information provided by private investment funds. You also state that the submitted information is "not a total or cumulative amount of fees assessed against or paid by the [b]enefit [p]lan; rather the information is fee information broken down annually for the years 2000 through 2005." Therefore, you argue, the submitted spreadsheet is not subject to section 552.0225 of the Government Code. *See id.* § 552.0225(b) (listing categories of information held by governmental body relating to its investments that are public and not excepted from disclosure under the Act). After review of your argument, the submitted spreadsheet, and your representation that the submitted information is not subject to section 552.0225, we agree that the benefit plan must withhold the information at issue pursuant to section 552.143.

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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 289445

Enc. Submitted documents

c: Mr. Joel Harper  
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(w/o enclosures)