



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 14, 2007

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

OR2007-16541

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# 297263.

The City of San Antonio (the "city") received a request for three categories of information pertaining to CPS Energy's ("CPS") plans for new nuclear power plants from January 1 through September 24, 2007. You state that you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.133 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibits O-1 and O-2 were previously ruled upon by this office in Open Records Letter No. 2007-15972 (2007). In Open Records Letter No. 2007-15972 we concluded that Exhibit O-1 must be withheld under section 552.133 of the Government Code. We also concluded that Exhibit O-2 may be withheld under section 552.107 of the Government Code. Because we have no indication that the law, facts, and circumstances surrounding this prior ruling have changed, the city may continue to rely on Open Records

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<sup>1</sup>Although you raise section 552.101 in conjunction with the attorney-client privilege and attorney work product privilege, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

Letter No. 2007-15972 as a previous determination and withhold Exhibits O-1 and O-2 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You assert that the remaining information is excepted under section 552.133 of the Government Code, which excepts from disclosure a public power utility's information related to a competitive matter. Section 552.133(b) provides as follows:

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 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). A "competitive matter" is defined 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. *Id.* § 552.133(a)(3). Section 552.133(a)(3) lists 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. *Id.* § 552.133(c).

The city informs us that CPS is a public power utility for purposes of section 552.133. The city has also submitted a copy of CPS's competitive matters policy delineating categories of information that the city has determined to be competitive matters for purposes of section 552.133. The city asserts that the remaining information comes within the scope of CPS's policy and therefore is protected from public disclosure under section 552.133. After reviewing the CPS's arguments and the submitted information, we cannot conclude that CPS failed to act in good faith. *See id.* Furthermore, we conclude that this information is reasonably related to a competitive matter as defined by the policy at issue. Therefore, based

on your representations and our review, we conclude that the city must withhold the remaining information under section 552.133 of the Government Code.<sup>2</sup>

In summary, the city must continue to rely on Open Records Letter No. 2007-15975 and withhold Exhibits O-1 and O-2 pursuant to that ruling. The city must withhold the remaining information 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read "Justin D. Gordon". The signature is fluid and cursive, with the first name "Justin" and last name "Gordon" clearly distinguishable.

Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/jh

Ref: ID# 297263

Enc. Submitted documents

c: Mr. Greg Harman  
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(w/o enclosures)