



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2009

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

OR2009-01386

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# 333882.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for "the tabulation of the bids for the Braunig Power Plant Entrance Project." You state that you have released some of the requested information. You claim that the submitted pricing information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. Furthermore, you claim the information at issue may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, you notified Allbrite Construction and MJC & Associates General Contractors of CPS's receipt of the request for information and of each company's right to submit arguments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

Section 552.133 excepts from disclosure a public power utility's information related to a competitive matter. Section 552.133(b) provides:

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.

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. *Id.* § 552.133(a)(3). However, section 552.133(a)(3) also provides thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude 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).

CPS is a public power utility for purposes of section 552.133. You inform us, and provide documentation showing, the CPS Energy Board of Trustees (the "board"), as governing body of CPS, passed a resolution by vote pursuant to section 552.133 in which the board defined the information considered to be within the scope of the term "competitive matter." You assert the submitted pricing information comes within the scope of specified provisions within the resolution. The information at issue is not among the thirteen categories of information section 552.133(a)(3) expressly excludes from the definition of competitive matter. Furthermore, we have no evidence the board failed to act in good faith. *See id.* § 552.133(c). Upon review, we determine the information at issue relates to competitive matters in accordance with the submitted resolution. Therefore, CPS must withhold the submitted pricing information pursuant to section 552.133 of the Government Code.¹ The remaining information must be released to the requestor.

¹As our ruling is dispositive, we need not address your section 552.104 argument against disclosure.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

Ref: ID# 333882

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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