



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2009

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

OR2009-08614

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# 346849.

City Public Service Energy ("CPS Energy") received a request for "[t]he current salary, along with bonuses and incentives, for all members of the CPS Energy executive team, including all vice presidents, the deputy general manager and the chief sustainability officer." You state that CPS Energy will release the current compensation for its Chief Executive Officer, Chief Financial Officer, and next three most highly-compensated executives, as required by the Securities Exchange Act of 1934, Chapter 2B of title 15 of the United States Code.¹ You also state that "CPS Energy does not employ anyone in the position of Chief Sustainability

¹You inform us that the next three most highly-compensated executives are currently: Deputy General Manager; Executive Vice President - Energy Development; and Executive Vice President - General Counsel. You also inform us that CPS Energy considers the released information to be public information.

Officer, nor has it finalized incentive payments, if any, for 2009.”² You claim that the submitted information is exempted from disclosure under section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.133 of the Government Code exempts from disclosure a public power utility’s information related to a competitive matter. Section 552.133(b) provides:

Information or records are exempted from [required public disclosure] if the information or records are reasonably related to a competitive matter, as defined in this section. Exempted 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). 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. *See id.* 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).

You inform us CPS Energy is a city-owned public power utility for purposes of section 552.133. You state that the CPS Energy Board of Trustees (the “Board”), the governing body of CPS Energy, adopted its initial competitive matters resolution and that the Board has amended and revised that resolution multiple times. You have also submitted a copy of “CPS Board of Trustees Policy Determining Competitive Information” (“Policy”) (effective December 19, 2005), which delineates categories of information the Board

²We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

determined to be competitive matters for purposes of section 552.133. You assert the submitted information comes within the scope of CPS Energy's competitive matters policy and therefore is protected from public disclosure under section 552.133. After reviewing your arguments, the submitted Policy, and the information at issue, we have no reason to conclude that CPS Energy's governing body failed to act in good faith in determining this particular matter to be competitive. *See id.* Furthermore, we conclude the information at issue is reasonably related to a competitive matter as defined by CPS Energy's Policy and does not fall within any of the thirteen categories of information that section 552.133(a)(3) expressly excludes from the definition of competitive matter. *See id.* § 552.133(a)(3). Therefore, based on your representations and our review, we conclude CPS Energy must withhold the submitted information pursuant to section 552.133 of the Government Code.³

You ask that this office issue a previous determination allowing CPS Energy to withhold, without seeking a ruling from this office, information on employee compensation, including perquisites, other than such information related to CPS Energy's Chief Executive Officer, Chief Financial Officer, and next three most highly-compensated executives. With regard to future requests to CPS Energy for employee compensation information, CPS Energy may consider this ruling to be a previous determination under section 552.301(a) of the Government Code and need not request a ruling from this office to withhold requested information identifying the salary, including bonuses and incentives, of CPS Energy employees, other than information related to executives and executive compensation that CPS Energy must disclose under the Policy and the Securities Exchange Act. CPS Energy may consider this ruling a previous determination for such information for as long as the Policy deeming such information to be a competitive matter is in effect and for as long as the elements of law, fact, and circumstances on which this ruling is based do not change so as to no longer support our conclusion. *See Open Records Decision No. 673 at 7 (2001).*

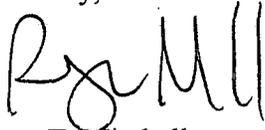
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

³We note that the submitted information falls within the scope of section 552.022(a)(2) of the Government Code, which requires disclosure of "the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]" unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(2). Section 552.133(d) provides, however, that "[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under [section 552.133]." *Id.* § 552.133(d).

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,

A handwritten signature in black ink, appearing to read "Ryan T. Mitchell". The signature is written in a cursive style with a large initial "R" and "M".

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 346849

Enc. Submitted documents

cc: Requestor
(w/o enclosures)