



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2009

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

OR2009-10753

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# 351366.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for information related to theft of gas or electrical energy during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released).

Initially, we address your assertion that the submitted information is not responsive. You state CPS maintains irregular meter connections records, but does not characterize such records as energy theft records, and CPS has never pressed criminal charges for energy theft or substantiated a theft of energy in any court of law. We note a governmental body has a

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

duty to make a good faith effort to relate the request to information that it holds. Open Records Decision No. 590 at 1 n. 1 (1991). The submitted information consists of irregular connection records maintained by CPS. We have reviewed the submitted information and conclude it is all responsive to the request. We will therefore address your claimed exceptions for 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 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). 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." The requestor asserts the responsive information does not fall within the categories designated by the board as "competitive matters." We note the submitted information consists of client information and sales information. CPS states, and has provided documentation showing, that client information and sales information come within the specified provisions of the resolution. The submitted information is not among the thirteen categories of information

that section 552.133(a)(3) expressly excludes from the definition of competitive matter. Furthermore, we have no evidence that the board failed to act in good faith in determining such information is a competitive matter. See *id.* § 552.133(c). Accordingly, we determine the submitted information relates to competitive matters in accordance with the submitted resolution. Therefore, CPS must withhold the submitted information pursuant to section 552.133 of the Government Code.²

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,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/cc

Ref: ID# 351366

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not consider your remaining argument against disclosure.