



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 1, 2016

Mr. Kipling D. Giles  
Senior Counsel  
Legal Services Division  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296-1771

OR2016-12410

Dear Mr. Giles:

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# 612371.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for the equation used for electricity usage estimation and anonymized monthly electricity usage data for all customers over a specified time. You claim a portion of the submitted information is excepted from disclosure under section 552.133 of the Government Code. You also state, and provide documentation showing, you notified SAP of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *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 exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume that 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.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from SAP. Thus, we have no basis to conclude SAP has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, CPS Energy may not withhold any of the submitted information on the basis of any proprietary interest SAP may have in the information.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). Section 552.133 provides in relevant part:

(a) In this section, "public power utility" means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, "competitive matter" means a utility-related matter that is related to the public power utility's competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

*Id.* § 552.133(a), (a-1)(1)(F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). You state CPS Energy is a municipally owned electric utility, and thus, a public power utility for the purposes of section 552.133. You explain release of Exhibit A would give competitors "insight on how CPS Energy serves its native load and what amount of power it may have remaining for sale on the wholesale market during a specific time period." Further, the submitted information is not among the fifteen categories of information expressly excluded from the definition of "competitive matter" by section 552.133(a-1)(2). You state the release of Exhibit A would place CPS Energy at a competitive disadvantage with its competitors. Based on your

representations and our review, we find Exhibit A relates to competitive matters as defined by section 552.133(a-1). Thus, we conclude CPS Energy must withhold Exhibit A under section 552.133 of the Government Code. As no other exceptions to disclosure have been raised, the remaining information must be released.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/dls

Ref: ID# 612371

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)