



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2015

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

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2015-13692

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# 570343.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for the amount of money CPS is paying DTZ Americas, Inc. ("DTZ") for specified services and for the service contract between CPS and DTZ. Although you take no position as to whether the submitted information is excepted under the Act, you state that release of this information may implicate the proprietary interests of DTZ. Accordingly, you state, and provide documentation showing, you notified DTZ 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 received comments from an attorney for DTZ. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note DTZ objects to disclosure of information CPS has not submitted to this office for review.¹ This ruling does not address the public availability of any information that

¹ We note the submitted information was created after CPS received the request for information. Thus, we conclude the submitted information is not responsive to the request for information.

is not responsive to the request and CPS is not required to release such information in response to this request.

DTZ argues the responsive rate schedule information it has marked is excepted from disclosure under section 552.110(b). However, we note the information at issue is contained within a contract executed with CPS. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, none of the responsive information DTZ seeks to withhold may be withheld under section 552.110(b) of the Government Code. As no further exceptions have been raised, the submitted 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, 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 570343

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Lori Fixley Winland
For DTZ Americas, Inc.
Locke Lord LLP
600 Congress, Suite 2200
Austin, Texas 78701
(w/o enclosures)

MAY 18 2017

At 9:04 a.m.
Velva L. Price, District Clerk

Cause No. D-1-GN-15-003036

DTZ AMERICAS, INC. AND
CUSHMAN & WAKEFIELD U.S.,
INC.,
Plaintiffs,

v.

THE ATTORNEY GENERAL OF
TEXAS, AND THE HONORABLE
KEN PAXTON IN HIS OFFICIAL
CAPACITY AS THE ATTORNEY
GENERAL OF TEXAS,
Defendants.

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IN THE DISTRICT COURT OF

353rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Plaintiffs DTZ Americas, Inc. and Cassidy Turley Real Estate Services, Inc. d/b/a DTZ, who has now been substituted as a plaintiff in this lawsuit by Cushman & Wakefield U.S., Inc. (collectively "DTZ"), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff DTZ and Defendants the Attorney General of Texas and the Honorable Ken Paxton, in his Official Capacity as the Attorney General of Texas (collectively "Attorney General"), arising out of this lawsuit have been resolved by a Settlement Agreement, a copy of which is attached hereto as Exhibit "A," and the parties agree to the entry and filing of this Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that in compliance



with section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Mr. Sergio Chapa, on April 18, 2017 providing reasonable notice of this setting. The requestor was informed of the parties' agreement that CPS Energy must withhold the information at issue. The requestor was also informed of his right to intervene in the suit to contest CPS Energy's right to withhold the information. The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The information at issue, the Rate Schedule comprising Exhibit D to the Consulting Agreement between CPS Energy and DTZ dated March 12, 2014, is confidential and must be withheld from the requestor by CPS Energy pursuant to Texas Government Code section 552.104 and *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015).

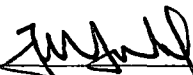
2. All other requested information must be withheld or released by CPS Energy in compliance with Letter Ruling OR2015-13692. Furthermore, Letter Ruling OR2015-13692 will not be considered a "previous determination" by the Open Records Division of the Office of the Attorney General under Tex. Gov't Code § 552.301(a), (f); and, if the precise information is requested again, CPS Energy may ask for a decision from the Attorney General under Tex. Gov't Code § 552.301(g).

3. All court cost and attorney fees are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

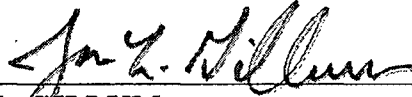
5. This Agreed Final Judgment finally disposes of all claims and all parties and is a final judgment.

SIGNED the 17th day of May, 2017.



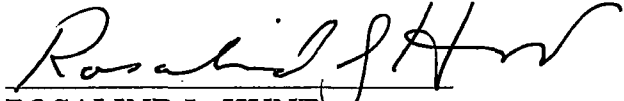
PRESIDING JUDGE
TIM SUVAR

AGREED:



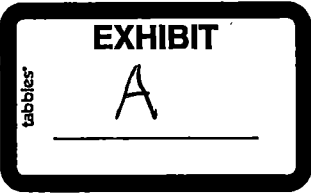
JON L. GILLUM
State Bar No. 24036638
LORI FIXLEY WINLAND
State Bar No. 24012506
Locke Lord LLP
600 Congress Avenue, Suite 2200
Austin, Texas 78701
Telephone: (512) 305-4700
Facsimile: (512) 305-4800
jgillum@lockelord.com
lwinland@lockelord.com

ATTORNEYS FOR PLAINTIFF
DTZ



ROSALIND L. HUNT
State Bar No. 24067108
Assistant Attorney General
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4166
Facsimile: (512) 457-4677
Rosalind.Hunt@oag.texas.gov

ATTORNEY FOR DEFENDANT
ATTORNEY GENERAL OF TEXAS



Cause No. D-1-GN-15-003036

DTZ AMERICAS, INC. AND
CUSHMAN & WAKEFIELD U.S.,
INC.,
Plaintiffs,

v.

THE ATTORNEY GENERAL OF
TEXAS, AND THE HONORABLE
KEN PAXTON IN HIS OFFICIAL
CAPACITY AS THE ATTORNEY
GENERAL OF TEXAS,
Defendants.

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IN THE DISTRICT COURT OF

353rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiffs DTZ Americas, Inc. and Cushman & Wakefield U.S., Inc.¹ (collectively “DTZ”) and Defendants the Attorney General of Texas and the Honorable Ken Paxton, in his Official Capacity as the Attorney General of Texas (collectively “Attorney General”), on the terms set forth below.

Background

On April 14, 2015, the City of San Antonio, Texas, acting by and through the City Public Service Board (CPS Energy), received a request for public information from Mr. Sergio Chapa of the San Antonio Business Journal. The request was for “the amount that CPS Energy is paying DTZ for their real estate consulting services as well as a copy of the service contract between DTZ and CPS Energy.” CPS Energy asked for an Attorney General decision under the Public Information Act

¹ Cushman & Wakefield U.S., Inc. is the legal successor of Cassidy Turley Real Estate Services, Inc. d/b/a DTZ and has been substituted as a Plaintiff in this lawsuit pursuant to an Agreed Order of Substitution entered by the Court.

(PIA), Texas Government Code section 552.301, on whether portions of this information could be withheld, and then notified DTZ that its proprietary interests may be involved in accordance with section 552.305. *See* Tex. Gov't Code §§ 552.301, .305.

In Letter Ruling OR2015-13692, the Open Records Division of the Attorney General (ORD) required CPS Energy to release some information DTZ claimed was excepted from disclosure under section 552.110(b) of the Texas Government Code. *See* Tex. Att'y Gen. OR2015-13692.

After DTZ filed this lawsuit challenging Letter Ruling OR2015-13692, DTZ established the applicability of Texas Government Code section 552.104 to portions of the requested information under the Texas Supreme Court decision *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). Section 552.104 protects from disclosure "information that, if released, would give advantage to a competitor or bidder." Tex. Gov't Code § 552.104. The Attorney General agrees that the information at issue is excepted from disclosure under section 552.104.

Pursuant to Texas Government Code section 552.325(c), the Attorney General may enter into a settlement that allows all or part of the information at issue in this lawsuit to be withheld. Tex. Gov't Code § 552.325(c). All matters in controversy between the parties arising out of this lawsuit have been resolved. The parties agree to the following terms.

Terms

For good and sufficient consideration, the receipt of which is acknowledged,

the parties agree and stipulate that:

1. The information at issue, the Rate Schedule comprising Exhibit D to the Consulting Agreement between CPS Energy and DTZ dated March 12, 2014, is confidential and must be withheld from the requestor by CPS Energy pursuant to Texas Government Code section 552.104 and *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015).

2. All other requested information must be withheld or released by CPS Energy in compliance with Letter Ruling OR2015-13692. Furthermore, Letter Ruling OR2015-13692 will not be considered a "previous determination" by the Open Records Division of the Office of the Attorney General under Tex. Gov't Code § 552.301(a), (f); and, if the precise information is requested again, CPS Energy may ask for a decision from the Attorney General under Tex. Gov't Code § 552.301(g).

3. Each party to this Agreement will bear their own costs, including court costs and attorney fees, relating to this litigation.

4. The parties, DTZ and the Attorney General, agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney and is attached hereto as Exhibit 1.

5. Before entry of the agreed final judgment, the Attorney General will notify the requestor, as required by Texas Government Code section 552.325(c), of the proposed settlement and of his right to intervene. If the requestor intervenes, then this Agreement shall become null and void and the agreed final judgment shall not be entered.

6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

7. DTZ warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that DTZ has against the Attorney General arising out of the matters described in this Agreement.

8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against DTZ arising out of the matters described in this Agreement.

9. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

AGREED:

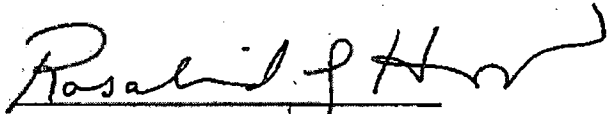
DTZ AMERICAS, INC.



TOD LICKERMAN
President & Chief Executive Officer
77 West Wacker Drive Ste. 1800
Chicago, IL 60601
Telephone: (312) 424-8000
tod.lickerman@cushwake.com

Date: 3.14.17

Date: 4/18/2017



ROSALIND L. HUNT
State Bar No. 24067108
Assistant Attorney General
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4166
Facsimile: (512) 457-4677
Rosalind.Hunt@oag.texas.gov

ATTORNEY FOR DEFENDANTS
ATTORNEY GENERAL OF TEXAS AND THE
HONORABLE KEN PAXTON, IN HIS OFFICIAL
CAPACITY AS THE ATTORNEY GENERAL OF
TEXAS

CUSHMAN & WAKEFIELD U.S., INC.

RICHARD CENKUS
North America General Counsel
2021 McKinney Avenue, Suite 900
Dallas, TX 75201
Telephone: (972) 663-9606
richard.cenkus@cushwake.com

Date: _____

AGREED:

DTZ AMERICAS, INC.

Date: ___/___/___

TOD LICKERMAN
President & Chief Executive Officer
77 West Wacker Drive Ste. 1800
Chicago, IL 60601
Telephone: (312) 424-8000
tod.lickerman@cushwake.com

Date: _____

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P.O. Box 12548, Capitol Station
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Facsimile: (512) 457-4677
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CAPACITY AS THE ATTORNEY GENERAL OF
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CUSHMAN & WAKEFIELD U.S., INC.



RICHARD CENKUS
North America General Counsel
2021 McKinney Avenue, Suite 900
Dallas, TX 75201
Telephone: (972) 663-9606
richard.cenkus@cushwake.com

Date: 4 | 11 | 17

“Exhibit 1”

Cause No. D-1-GN-15-003036

DTZ AMERICAS, INC. AND
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IN THE DISTRICT COURT OF

353rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Plaintiffs DTZ Americas, Inc. and Cassidy Turley Real Estate Services, Inc. d/b/a DTZ, who has now been substituted as a plaintiff in this lawsuit by Cushman & Wakefield U.S., Inc. (collectively "DTZ"), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff DTZ and Defendants the Attorney General of Texas and the Honorable Ken Paxton, in his Official Capacity as the Attorney General of Texas (collectively "Attorney General"), arising out of this lawsuit have been resolved by a Settlement Agreement, a copy of which is attached hereto as Exhibit "A," and the parties agree to the entry and filing of this Agreed Final Judgment.

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with section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Mr. Sergio Chapa, on _____, 2017 providing reasonable notice of this setting. The requestor was informed of the parties' agreement that CPS Energy must withhold the information at issue. The requestor was also informed of his right to intervene in the suit to contest CPS Energy's right to withhold the information. The requestor has not filed a motion to intervene.

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3. All court cost and attorney fees are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims and all parties and is a final judgment.

SIGNED the _____ day of _____, 2017.

PRESIDING JUDGE

AGREED:

JON L. GILLUM
State Bar No. 24036638
LORI FIXLEY WINLAND
State Bar No. 24012506
Locke Lord LLP
600 Congress Avenue, Suite 2200
Austin, Texas 78701
Telephone: (512) 305-4700
Facsimile: (512) 305-4800
jgillum@lockelord.com
lwinland@lockelord.com

ATTORNEYS FOR PLAINTIFFS
DTZ AMERICAS, INC. AND CUSHMAN &
WAKEFIELD U.S., INC.

ROSALIND L. HUNT
State Bar No. 24067108
Assistant Attorney General
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4166
Facsimile: (512) 457-4677
Rosalind.Hunt@oag.texas.gov

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