



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

October 4, 2016

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

Mr. Gabriel Garcia
Director - Senior Counsel
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2016-22310

Dear Mr. Garcia:

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# 629035.

CPS Energy ("CPS") received a request for all evaluation materials, submitted proposals, and contracts related to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of nineteen specified third parties. Accordingly, you state, and provide documentation demonstrating, you notified CLEAResult; Atlas Efficiency; Franklin Energy ("Franklin"); GDS Associates; Honeywell Smart Grid Solutions; ICF International ("ICF"); Leidos; Lime Energy; Lockheed Martin ("Lockheed"); M&M Weatherization; Opower ("Oracle"); Performance Systems Development ("PSD"); Ram's Weatherization; REGEN Energy; Sage Assessment/Inspections; Sodexo; Weather Bug; Wildan Energy Solutions; and Roadrunner of the request for information and of their 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 CLEAResult, Franklin, ICF, Lockheed, Oracle, PSD, Sodexo, and Weather Bug. We have considered the submitted arguments reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if

any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). We have received comments from Lockheed, but we note Lockheed claims no exceptions to disclosure of its information. Further, as of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the submitted information. See *id.* § 552.110; 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 may not withhold any portion of the submitted information related to these third parties on the basis of any proprietary interest they may have in the information.

Oracle raises section 552.101 of the Government Code for portions of its submitted information. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992), 545 (1990). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). However, the doctrine of common-law privacy protects the privacy interests of individuals, not of corporations or other types of business organizations. See Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); see also *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). Upon review, we find the information we have indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, CPS must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find Oracle has failed to demonstrate any of its submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of Oracle's submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Franklin, ICF, Sodexo, and Weather Bug claim section 552.104 of the Government Code for some of their respective information. Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Franklin, ICF, Sodexo, and Weather Bug all indicate they have competitors. Further, Franklin, ICF, Sodexo, and Weather Bug each represent release of the information at issue would give their competitors an advantage. We note Franklin seeks to withhold some of the terms of its contract. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *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). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find Franklin, ICF, Sodexo, and Weather Bug have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude CPS may withhold the information we have noted under section 552.104(a) of the Government Code.¹

CLEAResult, Oracle, PSD, and Weather Bug claim some of their information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov’t Code § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving

¹As our ruling is dispositive, we need not address these third parties’ remaining arguments against disclosure of this information.

materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . It may . . . relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.² RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983). We note pricing information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

CLEAResult, Oracle, and Weather Bug assert portions of their information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we conclude

²The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

CLEAResult has established a *prima facie* case that portions of its information constitute trade secret information. Accordingly, to the extent CLEAResult's customer information is not publicly available on its website, CPS must withhold CLEAResult's customer information under section 552.110(a). However, we conclude Oracle and Weather Bug have failed to establish a *prima facie* case that any portion of their information at issue meets the definition of a trade secret. Further, we conclude CLEAResult has failed to establish a *prima facie* case that any portion of its remaining information meets the definition of a trade secret. Additionally, we find CLEAResult, Oracle, and Weather Bug have not demonstrated the necessary factors to establish a trade secret claim for their remaining information. *See* ORD 402. Therefore, CPS may not withhold any of CLEAResult's remaining information or any of Oracle's or Weather Bug's information under section 552.110(a) of the Government Code.

CLEAResult, Oracle, PSD, and Weather Bug argue portions of their respective information consist of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find CLEAResult, Oracle, PSD, and Weather Bug have failed to demonstrate the release of the information at issue would result in substantial damage to their competitive positions. *See* Open Records Decision Nos. 661 at 5-6 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, CPS may not withhold any portion of CLEAResult's, Oracle's, PSD's or Weather Bug's information under section 552.110(b) of the Government Code.

The remaining documents include information that is subject to section 552.136 of the Government Code.³ Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, CPS must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.⁴

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Oracle claims section 552.139 for a portion of its submitted information. Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency[.]

Id. § 2059.055(b)(1). Oracle asserts disclosure of the information it has indicated “could pose a security risk” to some of its customers. However, we find Oracle failed to demonstrate any portion of the information at issue relates to computer network security, to restricted information under section 2059.055, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Further, we find Oracle failed to demonstrate any portion of the information at issue consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Consequently, CPS may not withhold any of Oracle's information under section 552.139 of the Government Code.

In summary, CPS must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. CPS may withhold the information we have noted under section 552.104(a) of the Government Code. To the extent CLEAResult's customer information is not publicly available on its website, CPS must

withhold CLEAResult's customer information under section 552.110(a) of the Government Code. CPS must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. 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, 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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 629035

Enc. Submitted documents

c: Requestor
(w/o enclosures)

21 Third Parties
(w/o enclosures)

JUN 22 2017

At 2:15 p.m.
Velva L. Price, District Clerk

Cause No. D-1-GN-16-005499

LOCKHEED MARTIN CORPORATION,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
THE ATTORNEY GENERAL OF TEXAS;	§	TRAVIS COUNTY, TEXAS
KEN PAXTON, in his official capacity as	§	
ATTORNEY GENERAL OF TEXAS;	§	
PAULA GOLD-WILLIAMS, in her	§	
official capacity as President and Chief	§	
Executive Officer of CPS ENERGY; and	§	
CPS ENERGY,	§	
<i>Defendants.</i>	§	345th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ch. 552, in which Lockheed Martin Corporation ("Lockheed"), sought to withhold certain information which is in the possession of Paula Gold-Williams, in her official capacity as President and Chief Executive Officer of CPS Energy and CPS Energy (collectively, CPS Energy) from public disclosure. All matters in controversy between Lockheed; the Attorney General of Texas and Ken Paxton, in his official capacity as Attorney General of Texas (collectively, Attorney General); and CPS Energy arising out of this lawsuit have been resolved by a Settlement Agreement, a copy of which without exhibits is attached hereto as Attachment 1, and the parties agree to the entry and filing of this Agreed Final Judgment.

The Attorney General represents to the Court that, in compliance with Texas Government Code section 552.325(c), the Attorney General sent a certified letter to the requestor, Ms. Lauree Valverde, on May 29, 2017, informing her of the settling of this matter and the entry of this Agreed Final Judgment at the uncontested docket on this date. The requestor was informed of the parties' agreement



that CPS Energy will withhold the designated portions of the information at issue. The requestor was also informed of her right to intervene in the suit to contest the withholding of this information. Verification of the certified mailing of the letter is attached to this judgment as Attachment 2.

The requestor has not filed a motion to intervene. Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period to intervene after notice is attempted by the Attorney General.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The requestor sought, in addition to records pertaining to other companies, a proposal that Lockheed submitted to CPS Energy related to RFP No. 7000135269 for Residential and Commercial Programs; a copy of the proposal was produced by CPS Energy in accordance with the Agreed Protective Order in this lawsuit on February 15, 2017 (the Lockheed Information). After reviewing the entirety of the Lockheed Information, Lockheed, the Attorney General, and CPS Energy have agreed that in accordance with the PIA portions of the Lockheed Information are excepted from disclosure pursuant to Texas Government Code section 552.104. Specifically, the Parties have agreed that (a) only the redacted documents attached as Exhibit A to the Settlement Agreement are subject to release (the Agreed Public Information) and (b) all other portions of the Lockheed Information besides the Agreed Public Information are confidential. As a result, CPS Energy (i) will release to the requestor only the Agreed Public Information, (ii) will not release to the requestor any information that has been

redacted or excluded from Exhibit A to the Settlement Agreement, and (iii) will not release any other portions of the Lockheed Information. Therefore, it is ADJUDGED, ORDERED AND DECLARED that the Agreed Public Information is public and shall be released by CPS Energy, and it is further ADJUDGED, ORDERED AND DECLARED that all other Lockheed Information is confidential and shall not be released by CPS Energy or the Attorney General.

2. Attorney General Letter Ruling OR2016-22310 shall not be relied on as a previous determination and, if the precise information is requested again, CPS Energy may ask for a decision from the Attorney General under Texas Government Code section 552.301(g);

3. All court costs 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 that are the subject of this lawsuit between Lockheed, the Attorney General, and CPS Energy and is a final judgment.

SIGNED the 22nd day of June, 2017.



PRESIDING JUDGE

Hon. J. David Phillips

AGREED:


KIMBERLY FUCHS

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Assistant Attorney General
Administrative Law Division
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**ATTORNEY FOR DEFENDANTS ATTORNEY
GENERAL OF TEXAS AND THE HONORABLE
KEN PAXTON, IN HIS OFFICIAL CAPACITY AS THE
ATTORNEY GENERAL OF TEXAS**

See Next Page


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AGREED:

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KEN PAXTON, IN HIS OFFICIAL CAPACITY AS THE
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A

Cause No. D-1-GN-16-005499

LOCKHEED MARTIN CORPORATION,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
THE ATTORNEY GENERAL OF TEXAS;	§	TRAVIS COUNTY, TEXAS
KEN PAXTON, in his official capacity as	§	
ATTORNEY GENERAL OF TEXAS;	§	
PAULA GOLD-WILLIAMS, in her	§	
official capacity as President and Chief	§	
Executive Officer of CPS ENERGY; and	§	
CPS ENERGY,	§	
<i>Defendants.</i>	§	345th JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Lockheed Martin Corporation (Lockheed); the Attorney General of Texas and Ken Paxton, in his Official Capacity as the Attorney General of Texas (collectively, the Attorney General); and CPS Energy and Paula Gold-Williams, as President and Chief Executive Officer of CPS Energy (collectively, CPS Energy). This Agreement is made on the terms set forth below.

Background

This case is a challenge to Open Records Letter ruling OR2016-22310. Lockheed disputed the ruling as it applies to its information, some of which Lockheed claims is proprietary and not subject to release under the Texas Public Information Act (PIA). Lockheed filed the above-styled lawsuit to preserve its rights under the PIA.

Lockheed submitted information and briefing to the Attorney General establishing that some of its information is excepted from disclosure under Texas Government Code section 552.104.

Texas Government Code section 552.325(c) allows the Attorney General to enter into a settlement pursuant to which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation and therefore agree to this settlement.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. The requestor sought, in addition to records pertaining to other companies, a proposal that Lockheed submitted to CPS Energy related to RFP No. 7000135269 for Residential and Commercial Programs; a copy of the proposal was produced by CPS Energy in accordance with the Agreed Protective Order in this lawsuit on February 15, 2017 (the Lockheed Information). After reviewing the entirety of the Lockheed Information, Lockheed, the Attorney General, and CPS Energy have agreed that in accordance with the PIA portions of the Lockheed Information are excepted from disclosure pursuant to Texas Government Code section 552.104. Specifically, the Parties have agreed that (a) only the redacted documents attached as Exhibit A to this Agreement are subject to release (the Agreed Public Information) and (b) all other portions of the Lockheed Information besides the Agreed Public Information are confidential. As a result, CPS Energy (i) will release to the requestor only the Agreed Public Information, (ii) will not release to the requestor any information that has been redacted or excluded from Exhibit A to this Agreement, and (iii) will not release any other portions of the Lockheed Information.

2. Lockheed, CPS Energy, and the Attorney General agree to the entry of an agreed final judgment, a copy of which is attached hereto as Exhibit B and the form of which

has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor.

3. The Attorney General agrees that he will also notify the requestor, as required by Texas Government Code section 552.325(c), of the proposed settlement and of her right to intervene to contest Lockheed's right to have CPS Energy withhold the information.

4. If the requestor intervenes before entry of the agreed final judgment, then this Agreement shall become null and void and the agreed final judgment shall not be entered.

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

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. Lockheed 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 Lockheed has against the Attorney General and/or CPS Energy arising out of the matters described in this Agreement.

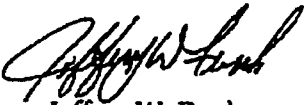
8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and

settlement and release of all claims that the Attorney General has against Lockheed and/or CPS Energy arising out of the matters relating to Lockheed described in this Agreement.

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

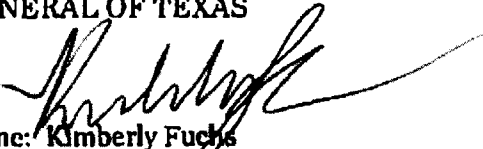
10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

LOCKHEED MARTIN CORPORATION

By: 
name: Jeffery W. Funk
title: Contracts Manager


Date: 5/26/2017

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

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division

Date: 5/30/17

PAULA GOLD-WILLIAMS, IN HER
OFFICIAL CAPACITY AS PRESIDENT
AND CHIEF EXECUTIVE OFFICER
OF CPS ENERGY AND CPS ENERGY

By: 
name: KIPLING D. GILES
title: Director, Senior Counsel
Date: 5/26/2017

e-mail: kdgiles@cpsenergy.com

**ATTORNEY FOR DEFENDANTS PAULA GOLD-WILLIAMS
IN HER OFFICIAL CAPACITY AS PRESIDENT AND
CHIEF EXECUTIVE OFFICER OF CPS ENERGY AND
CPS ENERGY**

The requestor has not filed a motion to intervene. Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period to intervene after notice is attempted by the Attorney General.

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. CLEAResult, the Attorney General, and CPS Energy have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue, which is contained in a bid from CLEAResult to CPS Energy, is excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant to Texas Government Code section 552.104, the bid will be released in conformity with the redactions proposed by CLEAResult in its letter dated January 27, 2017, and the information CLEAResult claimed was proprietary as more fully described in the referenced letter will not be disclosed. The Attorney General will provide a copy of the documents, redacted in accordance with this agreement, to CPS Energy for release to the requestor.
2. Attorney General Letter Ruling OR2016-22310 shall not be relied on as a previous determination.
3. All court costs and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and

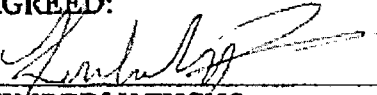
5. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between CLEAResult, the Attorney General, and CPS Energy and is a final judgment.

SIGNED the 06th day of July, 2017.




PRESIDING JUDGE

AGREED:



KIMBERLY FUCHS
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Assistant Attorney General
Administrative Law Division
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Austin, Texas 78711-2548
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ATTORNEY FOR PLAINTIFF CLEAResult CONSULTING



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ATTORNEY FOR DEFENDANT CPS ENERGY

A

Cause No. D-1-GN-16-005480

CLEARRESULT CONSULTING, INC., a	§	IN THE DISTRICT COURT OF
Texas Corporation,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
KEN PAXTON, in his official capacity as	§	
the Attorney General of the State of	§	
Texas, and CPS ENERGY, a municipal	§	
corporation,	§	
<i>Defendants.</i>	§	53rd JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between CLEAResult Consulting ("CLEAResult"), Ken Paxton, Attorney General of Texas (the Attorney General), and CPS Energy. This Agreement is made on the terms set forth below.

Background

This case is a challenge to Open Records Letter ruling OR2016-22310. CLEAResult disputed the ruling as it applies to its information, some of which CLEAResult claims is proprietary. CLEAResult filed the above-styled lawsuit to preserve its rights under the PIA.

CLEAResult submitted information and briefing to the Attorney General establishing that some of its information is excepted from disclosure under Texas Government Code section 552.104. CPS Energy and the Attorney General agree to the settlement.

Texas Government Code section 552.325(c) allows the Attorney General to enter into a settlement pursuant to which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. CLEAResult, the Attorney General, and CPS Energy have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue, which is contained in a bid from CLEAResult to CPS Energy, is excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant to Texas Government Code section 552.104, the bid will be released in conformity with the redactions proposed by CLEAResult in its letter dated January 27, 2017, and the information CLEAResult claimed was proprietary as more fully described in the referenced letter will not be disclosed. The Attorney General will provide a copy of the documents, redacted in accordance with this agreement, to CPS Energy for release to the requestor.
2. CLEAResult, CPS Energy, 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. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor.
3. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of her right to intervene to contest CLEAResult's right to have CPS Energy withhold the information.
4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.
5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

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. CLEAResult 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 CLEAResult has against the Attorney General and/or CPS Energy 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 CLEAResult and/or CPS Energy arising out of the matters relating to CLEAResult described in this Agreement.

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

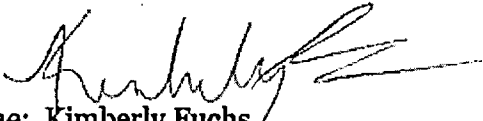
10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

CLEARRESULT CONSULTING

By: 
name: Shannon Armstrong
firm: Holland and Knight, LLP

Date:

**KEN PAXTON, ATTORNEY GENERAL
OF TEXAS**

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division

Date:

CPS ENERGY

By: *See next page*
name: Kipling D. Giles
title: Director, Senior Counsel
Date:

CLEARRESULT CONSULTING

By:
name: Shannon Armstrong
firm: Markowitz Herbold PC

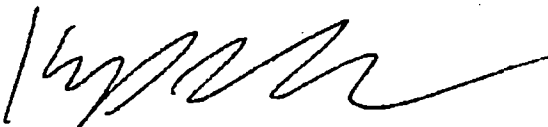
Date:

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS

By:
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division

Date:

CPS ENERGY

By: 
name: KIPLING D. GILES
title: Director, Senior Counsel
Date: 6-2-17

B