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ATTORNEY GENERAL OF TEXAS

May 2, 2017

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

OR2017-09375

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# 655903.

The City Public Service Board of San Antonio d/b/a CPS Energy ("CPS") received a request for copies of specified letters. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Vision Solar ("Vision"), Apex Home Energy Savings, LLC ("Apex"), and Air, Wind and Solar ("AWS"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 AWS. We have reviewed the submitted information and considered the submitted arguments.

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). As of the date of this letter, we have not received comments from

Vision and Apex explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have protected proprietary interests in the information at issue. *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 the submitted information on the basis of any proprietary interest Vision and Apex may have in the information.

AWS raises section 552.103 of the Government Code, the litigation exception, and the work product privilege under section 552.111 for a portion of the submitted information. We note sections 552.103 and 552.111 protect the interests of governmental bodies, as distinguished from exceptions which are intended to protect the interests of third parties. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 522 (1989) (discretionary exceptions in general), 670 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived). As CPS does not raise sections 552.103 and 552.111, we will not consider AWS's argument under these exceptions. Therefore, CPS may not withhold any of AWS's information under section 552.103 of the Government Code or the work product privilege of section 552.111 of the Government Code.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We are unable to discern whether the e-mail addresses at issue fall within the scope of section 552.137(c). Therefore, we must rule conditionally. To the extent the marked e-mail addresses are not excluded by subsection 552.137(c) of the Government Code, CPS must withhold them under section 552.137 of the Government Code unless the member of the public consents to its release. However, to the extent the marked e-mail addresses are excluded by subsection 552.137(c), CPS may not withhold them under section 552.137 but, instead, must release them to the requestor.

In summary, to the extent the marked e-mail addresses are not excluded by subsection 552.137(c) of the Government Code, CPS must withhold them under section 552.137 of the Government Code unless the owners affirmatively consent to their release. 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,



Emily Buchanan
Assistant Attorney General
Open Records Division

EB/eb

Ref: ID# 655903

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)