



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2017

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

OR2017-22080

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# 677018.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for information pertaining to a specified bid. Although you take no position as to whether the requested information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of DXE Medical, Inc ("DXE"). Accordingly, you state you notified DXE of the request for information and of its right to submit arguments to this office as to why the information at issue 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 reviewed the submitted information.

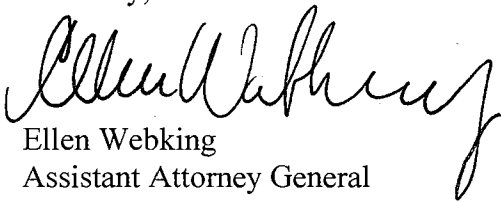
We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from DXE explaining why the submitted information should not be released. Therefore, we have no basis to conclude DXE has 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 Energy may not withhold the submitted information on the basis of any proprietary interest DXE may have in the information. Therefore, as no exceptions against disclosure have been raised, CPS Energy must release the submitted information.

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/tdw

Ref: ID# 677018

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)