



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2018

Mr. Adam Aldrete
Legal Counsel
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2018-01507

Dear Mr. Aldrete:

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# 692344.

The City Public Service Board of San Antonio ("CPS Energy") received a request for four categories of information pertaining to a specified project. 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 HJD Capital Electric, Inc. ("Capital") and E-Z Bel Construction. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 received comments from Capital. We have considered the submitted comments and reviewed the submitted information.

Initially, we note Capital argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what CPS Energy has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting

decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information CPS Energy submitted as responsive to the request for information.

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third party 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 the remaining third party may have in the 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, 839 (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. Capital states it has competitors. In addition, Capital states release of some of the submitted information would give advantage to a competitor or bidder. After review of the information at issue and consideration of the arguments, we find Capital has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude CPS Energy may withhold the information we have indicated under section 552.104(a) of the Government Code.¹ The remaining information must be released.

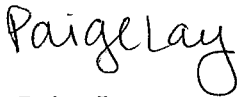
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹As our ruling is dispositive, we do not address the remaining arguments against disclosure of this information.

[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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/gw

Ref: ID# 692344

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: 2 Third Parties
(w/o enclosures)