



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2019

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

OR2019-02324

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# 747635.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for the contracts and proposals relating 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 Dios Dado Environmental Ltd. and Weston Solutions, Inc. ("Weston Solutions"). Accordingly, you state, and provide documentation showing, you notified the third parties 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 Weston Solutions. We have reviewed the submitted information and considered the submitted arguments.

Initially, CPS Energy informs us of the information responsive to the instant request was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-27366 (2018). In that ruling, we found CPS Energy must release the submitted information. We have no indication the law, facts, or circumstances on which

the prior ruling was based have changed. Thus, to the extent the requested information is identical to the information previously requested and ruled upon, CPS Energy must continue to rely on Open Records Letter No. 2018-27366 as a previous determination and release the identical information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, to the extent the submitted information is not subject to the previous ruling, we will consider the submitted arguments against disclosure of the information at issue.

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) 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 the remaining notified third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude this 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 notified third party may have in it.

Weston Solutions states portions of its information are excepted from disclosure under section 552.110(b) 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(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that 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, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

Weston Solutions argues portions of its pricing information consist of commercial or financial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, however, we note the contract at issue was awarded to Weston Solutions. 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* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (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, CPS Energy may not withhold any of Weston Solutions' pricing information at issue under section 552.110(b).

We understand Weston Solutions to raise section 552(b)(4) of title 5 of the United States Code, the Freedom of Information Act ("FOIA"). We note FOIA is applicable to information held by an agency of the federal government. In this instance, the information at issue is held by a Texas agency, which is subject to the laws of the State of Texas. *See* Attorney General Opinion MW-95 (1979) (FOIA exceptions apply to federal agencies, not to state agencies); Open Records Decision Nos. 496 (1988), 124 (1976); *see also Davidson v. Georgia*, 622 F.2d 895, 897 (5th Cir. 1980) (state governments are not subject to FOIA); Open Records Decision No. 561 at 7 n.3 (1990) (noting federal authorities may apply confidentiality principles found in FOIA differently from way in which such principles are applied under Texas open records law). This office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See, e.g.,* Attorney General Opinion MW-95; ORD 124 (fact that information held by federal agency is excepted by FOIA does not necessarily mean that same information is excepted under Act when held by Texas governmental body). Thus, CPS Energy may not withhold any portion of the submitted information on the basis of FOIA.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, CPS Energy must continue to rely on Open Records Letter No. 2018-27366 as a previous determination and release the identical information at issue in accordance with that ruling. To the extent the requested information is not identical to the information previously requested and ruled upon, 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,

A handwritten signature in cursive script that reads "Cole Hutchison". The signature is written in black ink and is positioned below the word "Sincerely,".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/gw

Ref: ID# 747635

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 2 Third Parties
(w/o enclosures)