



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 8, 2019

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

OR2019-03819

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# 749543.

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 bid evaluation documents pertaining 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 Allbright Construction; Dorazio; HJD Capital Electric, Inc. ("HJD"); LCRA; NHPL; Paloma Blanca Enterprise, Inc. ("Paloma"); and SEPCO. 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 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 HJD and Paloma. We have reviewed the submitted information and the submitted arguments.

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). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties 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 parties 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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. HJD and Paloma state they have competitors, including the requestor's company. In addition, HJD and Paloma state release of their information, including pricing information, would give their competitors a competitive advantage. Upon review of the information at issue and consideration of the arguments, we find HJD and Paloma have established the release of their 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.<sup>1</sup> CPS Energy must release the remaining 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](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

---

<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 black ink, appearing to read 'S.M. Pounds', written in a cursive style.

Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/som

Ref: ID# 749543

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

7 Third Parties  
(w/o enclosures)