



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2019

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

OR2019-11554

Dear Mr. Adrete:

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# 763310.

The City Public Service Board of the City of San Antonio ("CPS") received two requests from different requestors for the bid tabulation for a specified project. CPS does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, CPS states, and provides documentation showing, it notified the following third parties of CPS's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released: Anixter Inc.; MSC Direct; Swain Distribution; Techline, Inc. ("Techline"); Tool Barn; and Wesco Distribution. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (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 Techline objecting to the release of some of the information at issue. We have considered the submitted arguments and reviewed the submitted information.

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 requested information relating to it should be withheld from disclosure. *See Gov't Code § 552.305(d)(2)(B).* As of the date of this letter, none of the remaining third parties has submitted to this office any reasons explaining why the requested information should not be released. Accordingly, we have no basis for concluding the submitted information constitutes proprietary information of these third parties, and CPS may not withhold any portion of it on that basis. *See 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, release of requested information would*

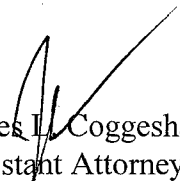
cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

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, 841 (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.* Techline states it has competitors and argues release of its information would cause it substantial competitive harm. Upon review, we find Techline has established the release of the information at issue, which we have marked, would give advantage to a competitor or bidder. Thus, we conclude CPS may withhold the information we have marked under section 552.104(a) of the Government Code. CPS 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 763310

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)