



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2019

Ms. Stacy Cormican  
Attorney  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296-1771

OR2019-30972

Dear Ms. Cormican:

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# 795005.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received four requests from different requestors for information pertaining to a specified bid tabulation.<sup>1</sup> 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 Franchise Maintenance Organization, Inc.; HJD Capital Electric, Inc. ("HJD"); Industrial Construction Company ("Industrial"); JAMCO Ventures, LLC ("JAMCO"); MAPCO, Inc.; and Tejas Premier Building Contractor, Inc. ("Tejas"). Accordingly, you state, and provide documentation showing, you notified these interested 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). You have provided this office comments from Industrial stating it does not object to release of its information. We have received comments from JAMCO, HJD, and Tejas. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> We note CPS Energy sought and received clarification of one of the requests for information. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from HJD, JAMCO, and Tejas. Thus, we have no basis to conclude any of the remaining interested third parties have protected proprietary interests in the submitted information. *See id.* § 552.110(a)-(b); 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 any of the submitted information on the basis of any proprietary interest any of the remaining interested third parties may have in the information.

Next, we note Tejas seeks to withhold information not submitted to this office by CPS Energy. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by CPS Energy, this ruling does not address this information and is limited to the information submitted as responsive by CPS Energy.<sup>2</sup>

HJD asserts its information is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). 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 indicates it has competitors. In addition, HJD states release of the information at issue would provide its competitors an advantage. After review of the information at issue and consideration of the arguments, we find HJD has established release of its information would give advantage to a competitor or bidder. Thus, we conclude CPS Energy must withhold HJD's information under section 552.104(a) of the Government Code.<sup>3</sup>

Section 552.110(b) of the Government Code 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 5-6.

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<sup>2</sup> As we are able to make this determination, we need not address Tejas' arguments against disclosure of this information.

<sup>3</sup> As our ruling is dispositive, we need not address HJD's remaining argument against disclosure of this information.

We understand JAMCO to assert section 552.110(b) applies to some of its information. Upon review, we find JAMCO has demonstrated its pricing information constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, CPS Energy must withhold JAMCO's pricing information under section 552.110(b) of the Government Code.<sup>4</sup>

In summary, CPS Energy must withhold HJD's information under section 552.104(a) of the Government Code. CPS Energy must withhold JAMCO's pricing information under section 552.110(b) of the Government Code. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Sean McCormick  
Attorney  
Open Records Division

SMC/eb

Ref: ID# 795005.

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)

7 Third Parties  
(w/o enclosures)

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.