



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 2, 2020

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

OR2020-10165

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# 819974.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for information related to five specified requests for quotations. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. Additionally, CPS Energy states release of the submitted information may implicate the proprietary interests of the following third parties: Crawford Electrical Supply Company; Gexpro; Grainger; Graybar; KBS Electric; Stuart C. Irby Co.; Techline, Inc.; Texas Electric Cooperative; and Wesco Distribution, Inc. Accordingly, CPS Energy states, and provides documentation showing, it notified these interested third parties of the request for information and of their right to submit arguments to this office. *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 considered the submitted arguments and reviewed the submitted information.

Initially, we note CPS Energy has only submitted information pertaining to four of the five specified requests for quotations. To the extent any information responsive to the remaining portion of the request existed on the date CPS Energy received the request, we assume CPS Energy has released it. If CPS Energy has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a

particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” Gov’t Code § 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find CPS Energy has established the release of the information at issue would harm its interests by providing an advantage to a competitor or bidder in a particular competitive situation that is set to reoccur or for which CPS Energy has demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Thus, we conclude CPS Energy may withhold the submitted information under section 552.104(a).<sup>1</sup>

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/gw

Ref: ID# 819974

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Parties  
(w/o enclosures)

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