



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 2, 2020

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

OR2020-10174

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# 820017.

The City of San Antonio City Public Service Board ("CPS Energy") received a request for information pertaining to a specified request for proposals.<sup>1</sup> CPS Energy claims 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 Brenntag Southwest, Inc.; Cabot Norit ("Cabot"); and GC3 Specialty Chemicals. Accordingly, CPS Energy states, and provides documentation showing, it 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 Cabot. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information and considered the submitted arguments.

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

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<sup>1</sup> CPS Energy states it sought and received clarification of the information requested. *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).

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.” *Id.* § 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 ongoing competitive situation. Thus, we conclude CPS Energy may withhold the submitted information under section 552.104(a).<sup>2</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,

Alexandra C. Burks  
Attorney  
Open Records Division

ACB/gw

Ref: ID# 820017

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.