



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 9, 2020

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

OR2020-10650

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# 820956.

The City Public Service Board of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for the name of the awarded contractor and the amount awarded pertaining to a specified contract. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of Dimension Energy Services, LLC ("Dimension"). Accordingly, you state, and provide documentation demonstrating, CPS Energy notified Dimension of the request for information and of its 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 Dimension. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Dimension argues against the release of information CPS Energy has not submitted to this office for our review. This ruling does not address information that was not submitted by CPS Energy and is limited to the information CPS Energy has submitted for our review.<sup>1</sup> *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

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<sup>1</sup> As we are able to make this determination, we need not address Dimension's arguments against disclosure of this information.

Dimension raises section 552.104 of the Government Code for its information at issue. Section 552.104 excepts from disclosure information “if *a governmental body* demonstrates that release of the information 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.” *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3.* Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code 552.104(a). Therefore, we do not address Dimension’s arguments under section 552.104 of the Government Code.

Dimension also asserts its information at issue is excepted from disclosure under section 552.110 of the Government Code.<sup>2</sup> Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Dimension argues its information at issue consists of trade secrets subject to section 552.110(b). Upon review, we find Dimension has failed to provide specific factual evidence demonstrating any portion of the information at issue is a trade secret. Therefore, CPS Energy may not withhold any portion of the submitted information under section 552.110(b) of the Government Code.

Section 552.110(c) of the Government Code excepts from disclosure “commercial 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[.]” *Id.* § 552.110(c). Dimension argues its information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find Dimension has failed to provide specific factual evidence demonstrating the information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, CPS Energy may not

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<sup>2</sup> Although Dimension cites to sections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand Dimension to raise sections 552.110(b) and 552.110(c) based on the substance of its arguments.

withhold any portion of the submitted information under section 552.110(c) of the Government Code. CPS Energy must release the submitted 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/eb

Ref: ID# 820956

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)