



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 22, 2020

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

OR2020-14433

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# 829648.

The City Public Service Board of San Antonio, d/b/a CPS Energy ("CPS Energy") received two requests for information relating to a specified request for solicitations. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Aargon Collection Agency; Credit Systems International, Inc. ("CSII"); Exela Technology; IC System; LJ Ross Associates; McCarthy, Burgess, & Wolff; Sequium Asset Solutions, LLC; The CMI Group; and Virtuoso Sourcing Group. Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of their rights 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 arguments on behalf of CSII and IC System. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note IC System 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>1</sup>

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 id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, we have no basis to conclude any of the remaining 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 third parties may have in the information.

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 failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude CPS Energy may not withhold any of the submitted information under section 552.104(a).

CSII also raises section 552.104 of the Government Code for portions of its information. As noted above, 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." Gov't Code § 552.104(a) (emphasis added). In *Boeing*, 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 CSII's arguments under section 552.104.

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

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* Gov’t Code § 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). CSII argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find CSII has demonstrated portions of the information at issue constitute trade secrets. Accordingly, to the extent the customer information is not publicly available on CSII’s website, CPS Energy must withhold CSII’s customer information under section 552.110(b) of the Government Code. However, we find CSII has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, CPS Energy may not withhold any of the remaining information at issue 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). CSII argues some of its remaining information consists of commercial or financial information subject to section 552.110(c). However, we find CSII has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, CPS Energy may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, CPS Energy must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. However, we find CSII has not demonstrated any of the remaining information consists of access device numbers for purposes of section 552.136. Accordingly, CPS Energy may not withhold any of the remaining information under section 552.136 of the Government Code.

In summary, to the extent the customer information is not publicly available on CSII's website, CPS Energy must withhold CSII's customer information under section 552.110(b) of the Government Code. CPS Energy must withhold the insurance policy numbers in the remaining information under section 552.136 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,

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/gw

Ref: ID# 829648

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

c: Third Parties  
(w/o enclosures)