



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 30, 2020

Ms. Stacey Cormican  
Attorney  
CPS Energy  
145 Navarro  
San Antonio, Texas 78205

OR2020-24615

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# 846008.

The City Public Service Board of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for information pertaining to CPS Energy's contracts for specified services. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of certain third parties. Accordingly, you state, and provide documentation demonstrating, CPS Energy 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). We have considered the exception you claim reviewed the submitted 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 you have established release of the information at issue would harm CPS Energy's 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. Accordingly, we conclude CPS Energy may withhold the submitted information under section 552.104(a) of the Government Code.

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/rm

Ref: ID# 846008

Enc. Submitted documents

c: Requestor