



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 23, 2020

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

OR2020-26716

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# 850207.

The City Public Service Board of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for records demonstrating the costs and descriptions of certain types of items purchased for a specified CPS Energy project.<sup>1</sup> You state CPS Energy does not have information responsive to a portion of the present request.<sup>2</sup> You also state CPS Energy will release some information to the requestor. 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 Wittigs Office Interiors ("Wittigs"). Accordingly, you state, and provide documentation demonstrating, CPS Energy notified Wittigs 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*

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<sup>1</sup> You state, and provide documentation demonstrating, CPS Energy sought and received clarification of the information requested. *See Gov't Code* § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup> The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

§ 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 Wittigs. We have considered the submitted arguments and reviewed the submitted information.

Initially, we understand some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-02777 (2020). In Open Records Letter No. 2020-02777, we determined CPS Energy may withhold certain information under section 552.104(a) of the Government Code and must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law. However, we note, since the previous ruling was issued, the law regarding section 552.104 has changed. Therefore, because the law has changed with respect to the information at issue, CPS Energy may not rely on Open Records Letter No. 2020-02777 as a previous determination and withhold any portion of the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Accordingly, we will consider Wittigs' arguments against disclosure of the information at issue.

Wittigs raises section 552.110 of the Government Code for some of its information at issue. Section 552.110(b) states, “[e]xcept as provided by [s]ection 552.0222, 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). Section 552.110(c) of the Government Code states:

Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

*Id.* § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Upon review, we find Wittigs has demonstrated portions of its information at issue constitute commercial

or financial information, the release of which would cause substantial competitive harm. Accordingly, CPS Energy must withhold the information we marked and indicated under section 552.110(c) of the Government Code.<sup>3</sup> However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Additionally, we find Wittigs has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Further, we find Wittigs has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, CPS Energy may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

*Id.* § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Wittigs asserts some of its remaining information is subject to section 552.1101(a). However, we find some of the remaining information at issue is subject to section 552.0222(b) and may

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

not be withheld on the basis of section 552.1101(a). *See id.* §§ 552.0222(b). Additionally, we find Wittigs has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, CPS Energy may not withhold any portion of the remaining information at issue under section 552.1101(a) of the Government Code.

In summary, CPS Energy must withhold the information we marked and indicated under section 552.110(c) 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jxd

Ref: ID# 850207

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)