



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 3, 2022

Ms. Monica Dobie  
Corporate Counsel  
San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298-2449

OR2022-03391A

Dear Ms. Dobie:

This office issued Open Records Letter No. 2022-03391 (2022) on February 8, 2022. We have examined this ruling and determined we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on February 8, 2022. The request was assigned ID# 928344.

The San Antonio Water System (the "system") received a request for three categories of information regarding a specified project. You state you have released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the City Public Service Board ("CPS Energy"). Accordingly, you state, and provide documentation showing, you notified CPS 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 CPS. We have considered the submitted arguments and 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). CPS explains it competes with other electric energy suppliers in the wholesale power market and competes with other utilities for electric customers. Therefore, CPS asserts it has specific marketplace interests in the information at issue. Based upon these representations and our review, we find CPS has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find CPS has demonstrated release of the submitted information would give advantage to a competitor or bidder. Accordingly, the system may withhold the submitted information under section 552.104(a) on behalf of CPS.<sup>1</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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/ba

Ref: ID# 928344

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure.