



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2008

Mr. Paul M. Gonzalez
Senior Counsel
Legal Services Division
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2008-03140

Dear Mr. Gonzalez:

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# 304098.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for information pertaining a request for bids concerning the formation of an underwriting pool. You state that CPS has released some of the requested information. Although you take no position as to the disclosure of the remaining requested information, you state that it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that CPS notified: A.G. Edwards & Sons, Apex Pryor Securities, Bank of America Securities, Inc., Bear Stearns & Co., Cabrera Capital Markets, Inc., Citigroup Global Markets, Inc., Coastal Securities, First Albany Capital, Inc., Goldman, Sachs & Co., J.P. Morgan, Jackson Securities, Lehman Brothers, Loop Capital Markets, M.E. Allison & Company, M.R. Beal & Company, Merrill Lynch & Co., Morgan Keegan & Co., Morgan Stanley, Piper Jaffray & Co., Popular Securities, RBC Capital Markets, Ramirez & Company, Inc., SAMCO Capital Markets, Siebert, Brandford, Shank & Co., Southwest Securities, Inc., and UBS Financial Services of the request for information and of their right to submit arguments to this office as to why the requested 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 reviewed the submitted information.

Initially, we must address CPS's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(A)-(D). You state that CPS received the request for information on December 17, 2007. However, you did not submit the requested information for our review until February 28, 2008. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Accordingly, we conclude CPS has failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third parties' interests are at stake, we will address whether the remaining requested information must be withheld to protect the interests of these third parties.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305 (d)(2)(B). We note that you have submitted correspondence from Piper Jaffray & Co. and RBC Capital Markets stating that they do not object to release of their requested information. Accordingly, CPS may not withhold any portion of the information at issue on the basis of any proprietary interest that Piper Jaffray & Co. or RBC Capital Markets may have in it. In addition, as of the date of this letter, none of the remaining interested third parties have submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the

submitted information constitutes proprietary information of any of the remaining third parties, and the city may not withhold any portion of the submitted information on that basis. *See id.* § 552.110; 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 (1990). Accordingly, none of the requested information may be withheld based on the proprietary interest of these companies. As we have received no further arguments against disclosure, the information at issue must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 304098

Enc. Submitted documents

c: Ms. Debbie A. Valdez
Office Manager
Southwestern Capital Markets
140 East Houston, Suite 201
San Antonio, Texas 78205
(w/o enclosures)