



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2010

Mr. Kipling D. Giles
Senior Counsel
Legal Services Division
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2010-03651

Dear Mr. Giles:

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# 373355.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for the bid tabulation related to a specified request for qualifications. Although CPS takes no position as to the disclosure of the submitted information, you state that it may contain confidential and proprietary information subject to exception under the Act. Accordingly, you state and provide documentation showing CPS notified Fairway Landscape & Nursery and Border Construction Services (collectively the "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.¹ *See Gov't Code § 552.305(d); see also Open*

¹CPS also informs this office that Maldonado Nursery, Cribley Enterprises, Inc., GreenTree Lawn Care & Landscaping, ABC Professional Tree Services, Inc., Chemical Weed Control, Paloma Blanco Enterprises, Live Oak Services, Asplundh Tree Expert, Sendero Env., Cedar Solutions, and P&T Lawn Services do not object to the release of their information.

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.

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). As of the date of this letter, we have not received comments from the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third parties have protected proprietary interests in the submitted information. *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. Accordingly, CPS may not withhold the submitted information based upon the proprietary interests of the third parties. As no exceptions to disclosure have been raised, the submitted information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 373355

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Estevan Perez
Fairway Landscape & Nursery
2848 Castroville Road
San Antonio, Texas 78237
(w/o enclosures)

Mr. Ricci Pozzi
Border Construction Services
15943 Bulverde Road
San Antonio, Texas 78247
(w/o enclosures)