



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2010

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

OR2010-16057

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# 397687.

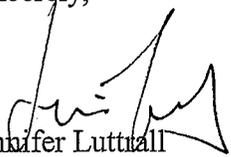
The City Public Service Board d/b/a CPS Energy ("CPS") received two requests from different requestors for the bid tabulation sheets pertaining to Request for Qualifications 70000092344-Elevator Pit Foundation. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Dorazio Enterprises ("Dorazio"), JC Industries ("JC"), MJC & Associates General Contractors ("MJC"), MKM Construction, L.T.D ("MKM"), and Shannon-Monk, Inc. ("Shannon-Monk"). You inform us MJC and Shannon-Monk do not object to release of their information in this instance. You state, and provide documentation showing, you notified the remaining third parties, Dorazio, JC Industries, and MKM, 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 reviewed the submitted information.

We note 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, this office has not received comments from Dorazio, JC, or MKM explaining why each third party's submitted information should not be released. Therefore, we have no basis to conclude that these third parties have a protected proprietary interest 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 any portion of the submitted information based upon the proprietary interests of Dorazio, JC, or MKM. As no exceptions 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_or1.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,


Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 397687

Enc. Submitted documents

c: Requestors
(w/o enclosures)

Mr. Mark Marlowe
MKM Construction
7150 Whippoorwill # 1
San Antonio, Texas 78263
(w/o enclosures)

Mr. Mark Dorazio
Dorazio Enterprises
143 North Tower Drive
San Antonio, Texas 78232
(w/o enclosures)