



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2012

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

OR2012-12265

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# 461426.

CPS Energy ("CPS") received two requests for low bid information pertaining to a specified request for proposals. Although CPS takes no position regarding whether the submitted information is excepted from disclosure, you state release of the requested information may implicate the proprietary interests of Dis-Tran Steel, LLC ("Dis-Tran"); Fapco; Unigus, LLC; and Valmont Industries. Accordingly, you provide documentation showing you have notified these third parties of the request and their right to submit arguments to this office. *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 Dis-Tran. We have considered the submitted arguments and reviewed the submitted information.

We first note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have received comments only from Dis-Tran. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 of the information at issue on the basis of any proprietary interest the remaining third parties may have in the information.

Dis-Tran raises section 552.104 of the Government Code, which excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” We note section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body’s interest in competitive bidding situation). As CPS does not raise 552.104, we will not consider Dis-Tran’s claim under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, CPS may not withhold any of the submitted information under section 552.104 of the Government Code. As no additional exceptions to disclosure are raised, the submitted information must be released to the requestors.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 461426

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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