



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2013

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

OR2013-10009

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# 490046.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for (1) the bid tabulation related to request for proposal number 7000116267 Energy Substation Foundation Construction Work and (2) the CPS policy prohibiting notification of bidders of contract award. You state you have no information responsive to item two of the request.¹ Although you take no position with respect to the public availability of the submitted information, you state it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation demonstrating, CPS notified certain third parties of the request for information and of the companies' rights to submit arguments to this office as to why the requested information should not be released.² 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 CCC. We have considered the submitted arguments and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²The notified third parties are: CCC Group, Inc. ("CCC"); Lambda Construction; and Paloma Blanca.
POST OFFICE BOX 12548, AUSTIN, TEXAS 78711-2548 TEL: (512) 463-2100 WWW.TEXASATTORNEYGENERAL.GOV

We 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 decision, we have only received correspondence from CCC. Thus, the remaining third parties have not demonstrated that they 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 the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

Next, we note CCC objects to the disclosure of information CPS has not submitted to this office for review. This ruling does not address information that was not submitted by CPS and is limited to the information submitted as responsive by CPS. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, CCC claims portions of its information are excepted under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (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).

Upon review of CCC's arguments under section 552.110(b), we find CCC has established its pricing information, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Therefore, CPS must withhold the information we have marked under section 552.110(b) of the Government Code. However, upon review, we find CCC has failed to provide specific factual evidence demonstrating release of the remaining information at issue would result in substantial competitive harm to the company. Accordingly, CPS may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code. As no further exceptions to disclosure are raised, CPS must release the remaining information.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 490046

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Will Wood
Paloma Blanca
c/o Kipling D. Giles
Senior Counsel
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296
(w/o enclosures)

Mr. Michael J. Black
For CCC Group, Inc.
Burns & Black, P.L.L.C.
750 Rittiman Road
San Antonio, Texas 78209-5500
(w/o enclosures)

Mr. Zane Shullanberger
Lambda Construction
c/o Kipling D. Giles
Senior Counsel
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296
(w/o enclosures)