



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2014

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

OR2014-05437

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# 518618.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received two requests for the bid tabulation in a specified RFQ. Although you state CPS takes no position with respect to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of Sunbelt Mill Supply ("Sunbelt"), Kennedy Wire Rope & Sling Company ("Kennedy"), MSC Industrial Supply Company ("MSC"), Nesco Sales & Rental ("Nesco"), and Midco Sling ("Midco").¹ Accordingly, you state and provide documentation showing, you have notified Sunbelt, Kennedy, MSC, Nesco, and Midco 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 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested

¹You inform us River City Hydraulics, Inc., does not object to the release of its information.

third party to raise and explain applicability of exception to disclosure under the circumstances). We have reviewed the submitted information.

Initially, we note, and you acknowledge, CPS did not comply with its ten- and fifteen-business-day deadlines under section 552.301(b) and 552.301(e) of the Government Code in requesting a decision from this office regarding the instant request. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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 section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the interests of third parties are at stake, we will consider the arguments against disclosure of 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) of the Government Code 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 Sunbelt, Kennedy, MSC, Nesco, or Midco explaining why their information should not be released. Therefore, we have no basis to conclude that Sunbelt, Kennedy, MSC, Nesco, or Midco has 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 of the submitted information on the basis of any proprietary interest Sunbelt, Kennedy, MSC, Nesco, or Midco may have in it. As no exceptions to disclosure were raised for the submitted information, it 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.texasattorneygeneral.gov/open/>

[url_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 518618

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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