



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2014

Ms. Patricia Ana Garcia Escobedo
Senior Counsel
Legal Services Division
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

OR2014-11177

Dear Ms. Escobedo:

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# 527719.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for the bid tabulations for fuel bid #700123934 and a second request from a different requestor for the winning bid and tabulations for the same fuel bid. You state, although CPS takes no position with respect to the requested information, its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, CPS notified the third parties of the requests for information and of their right to submit arguments stating why their information should not be released.¹ 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) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information and the arguments submitted by IPC.

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

¹The third parties notified pursuant to section 552.305 are the following: IPC (USA), Inc. ("IPC"); Petroleum Traders Corporation; PS Energy Group, Inc.; Sun Coast Resources, Inc.; and Truman Arnold Companies.

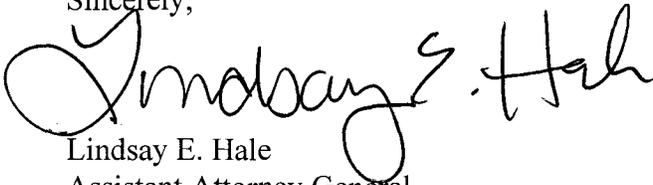
reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has received comments from only IPC explaining why its information should not be released to the requestors. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate the interests of the remaining third parties, and none of the submitted information may be withheld on that basis. *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.

IPC raises section 552.104 of the Government Code. This section excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). However, section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As CPS does not seek to withhold any information pursuant to this exception, no portion of IPC's information may be withheld on this basis. As no further exceptions to disclosure have been raised, CPS must release the submitted 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.texasattorneygeneral.gov/open/orl_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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 527719

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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Truman Arnold Companies
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Dallas, Texas 75201
(w/o enclosures)

Ms. Lisa Moore
Sun Coast Resources, Inc.
6405 Calvacade Street, Building 1
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(w/o enclosures)

Mr. Roger Lett
PS Energy Group, Inc.
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Mr. James Takeuchi
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