



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 3, 2014

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

OR2014-19849

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# 541775.

The City Public Service Board of the City of San Antonio ("CPS") received a request for the names of all respondents to a specified CPS request for information (the "RFI") and all materials submitted by those respondents. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. You also state release of the submitted information may implicate the interests of specified third parties. Accordingly, you notified nineteen third parties of the request for information and of their right to submit arguments stating why their 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) (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 received comments from three third parties. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.104 of the Government Code excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990).

You inform us the submitted information pertains to a pending multi-part competitive bidding process pertaining to the relocation of CPS headquarters. You explain the RFI is the first step in the bidding process. You state a final decision arising from the competitive bidding has not been made. Additionally, you assert release of the information at issue could significantly impede CPS’s chances of negotiating the most favorable terms and conditions by arming bidders with knowledge of what other bidders are willing to provide, enabling them to withhold their best prices and terms. You further assert release of the identities of the firms and individuals who responded to the RFI would provide insight into the potential properties involved as firms in this particular real estate segment are tied to a specific expertise, potential sites, and past projects and would result in a weakened negotiating position for CPS. In Attorney General Opinion No. MW-591 (1982), this office concluded the identities of probable bidders may be withheld under the statutory predecessor to section 552.104 because disclosure could interfere with the governmental body’s ability to obtain the most favorable bid. Attorney General Opinion MW-591 (1982). Based on your representations and our review, we conclude CPS may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in advantage to certain bidders at the expense of others and could be detrimental to public interest in contract under negotiation).<sup>2</sup>

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](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

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping initial "M".

Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/cbz

Ref: ID# 541775

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 19 Third Parties  
(w/o enclosures)