



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2015

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

OR2015-15378

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# 573107.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for a listing of properties submitted as possible sites for CPS Energy's new headquarters in a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 one of the third parties. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *9 (Tex. June 19, 2015). You represent the submitted information pertains to a competitive bidding situation. In addition, you state

CPS Energy is currently reviewing the submitted responses to the request for proposals and has not made a final decision on the project. You argue release of the submitted information would impede CPS Energy's chances of negotiating the most favorable terms and conditions for the project and would weaken CPS Energy's position. You assert release of the submitted information would allow bidders to see the prices and terms of other bidders, change their bids accordingly, and collude with one another to alter bids, giving them a competitive advantage. After review of the information at issue and consideration of the arguments, we find CPS Energy has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude CPS Energy may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 573107

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we do not address the remaining arguments against disclosure.