



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2015

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

OR2015-16996

Dear Mr. Kipling:

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# 575699.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS Energy") received a request for all proposals, other than the proposal of the requestor, received by CPS Energy in response to a specified request for proposals; specifically, schedules of fees, proposed rates, and any comparative calculations or tabulations used in evaluation, recommendation, and award of the contract. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Bank of America, Capital One Bank, JP Morgan Chase Bank ("JP Morgan"), and Wells Fargo Bank. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the companies' rights to submit arguments to this office as to why the submitted information should not be released. *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 JP Morgan. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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) 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 received comments from only JP Morgan explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, CPS Energy may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

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

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 2015). 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." *Id.* at *9. JP Morgan states it has competitors. In addition, JP Morgan states release of portions of its information would cause the company substantial competitive harm and give JP Morgan's competitors an unfair advantage. After review of the information at issue and consideration of the arguments, we find JP Morgan 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 information we have marked under section 552.104(a) of the Government Code.² As no further exceptions to disclosure have been raised, CPS Energy 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.

¹As we are able to make this determination, we need not address JP Morgan's arguments against disclosure of the information at issue.

²As our ruling is dispositive, we need not address JP Morgan's remaining argument against disclosure.

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# 575699

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Kristen R. Gibson
J.P. Morgan Chase Bank
1111 Fannin Street, Floor 10
Houston, Texas 77002
(w/o enclosures)

Mr. Patrick Hennessey
Wells Fargo
c/o Kipling D. Giles
Senior Counsel
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296
(w/o enclosures)

Ms. Kathy Ford Smith
Bank of America
c/o Kipling D. Giles
Senior Counsel
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296
(w/o enclosures)

Mr. John Taylor
Capital One Bank
c/o Kipling D. Giles
Senior Counsel
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296
(w/o enclosures)