



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 23, 2009

Ms. Frances M. Talamantez, C.P.  
Certified Paralegal  
Legal Service Division  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296

OR2009-05383

Dear Ms. Talamantez:

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# 340800.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for the last price paid and the manufacturer on CPS material #1006482. Although you take no position with respect to the public availability of the submitted purchase order, you state its release may implicate the proprietary interests of Stuart C. Irby Company ("SCIC"). Accordingly, you state, and have provided documentation showing, you notified SCIC of the request and of the company's right to submit arguments to this office as to why the submitted purchase order should not be released. *See* Gov't Code § 552.305(d); *see also* 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 the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you have redacted an address in the submitted purchase order. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code

§§ 552.301(a),(e)(1)(D). You do not assert, however, nor does our review of our records indicate, CPS been authorized to withhold addresses without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In the future, CPS should refrain from redacting information it submits to this office in seeking an open records ruling, unless it is authorized to do so. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code* § 552.302.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from SCIC explaining why the submitted purchase order should not be released. Therefore, we have no basis to conclude SCIC has protected proprietary interests 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 the submitted purchase order on the basis of any proprietary interest SCIC may have in the information. As no exceptions to disclosure have been claimed, the submitted purchase order 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

Ref: ID# 340800

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. David Eddington  
Stuart C. Irby Company  
5908 La Colonia  
San Antonio, Texas 78218  
(w/o enclosures)