



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2010

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

OR2010-04978

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# 375656.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for 1) information pertaining to why the requestor's company was not allowed to bid on a specified service contract, 2) information revealing why mandatory meetings are closed to open discussions, and 3) the prices charged on the last service contract. CPS takes no position on whether the submitted maintenance and repair services compensation schedule is excepted from disclosure, but states that release of this information may implicate the proprietary interests of Washing Equipment of Texas ("Washing"). Accordingly, you inform us, and provide documentation showing, that you notified Washing of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

Initially, we note that you have only submitted information responsive to the request for the prices charged on the last service contract. We note that the Act does not require a governmental body to answer factual questions in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental

body. *See* Open Records Decision No. 561 at 8 (1990). Accordingly, we assume CPS has made a good faith effort to do so and, to the extent any information responsive to the requestor's other requests existed and was maintained by CPS on the date CPS received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that 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 not received comments from Washing explaining why the submitted information should not be released. Therefore, we have no basis to conclude that Washing has 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, 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 information based upon the proprietary interests of Washing. As no exceptions against the disclosure of the submitted information are raised, it must be released to the requestor.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 387656

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Bob Lye
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