



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2010

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

OR2010-11144

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# 388170.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received two requests for the bid tabulation for ground maintenance services (collective no. 7000093102). Although CPS takes no position with respect to the public availability of the submitted bid tabulation, you state its release may implicate the proprietary interests of interested third parties. Accordingly, you state, and provide documentation showing, CPS notified Maldonado Nursery and Landscaping, Inc.; Cantu Contracting, Inc.; ISS Grounds Control; and Green Grass, Inc. ("Green Grass") of CPS's receipt of the request for information and of the companies' right to submit arguments to this office as to why their information should not be released to the requestor. *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 considered comments submitted by Green Grass and reviewed the submitted bid tabulation.

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 only from Green Grass explaining why its information should not be released. Therefore, we have no basis to conclude any of the remaining notified companies has protected proprietary interests in their proposals. *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 these companies' information on the basis of any proprietary interest they may have in it. As no further exceptions have been raised, these companies' information must be released to the requestor.

Green Grass indicates its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects the proprietary interests of private parties with respect to "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Green Grass generally asserts release of its information would cause it to face more competition. Green Grass has not, however, provided any specific factual evidence demonstrating how the release of its information would cause the company substantial competitive harm. *See* ORD 661. We therefore conclude that no portion of Green Grass's information may be withheld under section 552.110. As no further exceptions have been raised, the bid tabulation must be released in its entirety to the requestors.

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

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/em

Ref: ID# 388170

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

Ms. Susie De La Fuente  
Maldonado Nursery & Landscaping, Inc.  
16348 Nacogdoches Road  
San Antonio, Texas 78247

Mr. Tom Mikulastic  
General Manager  
ISS Grounds Control  
16331 Pleasantville Road  
San Antonio, Texas 78233-6603

Mr. Francisco Suarez-Pella  
Green Grass, Inc.  
5333 Randolph Boulevard  
San Antonio, Texas 78233-6298