



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2010

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

OR2010-11574

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# 388747.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received a request for the customer references submitted by HP Exstream ("HP") and Xerox Corporation ("Xerox") as well as the portions of the evaluation matrix pertaining to these two companies in relation to request for proposals number 7000090167. You state CPS has released the requested evaluation matrix to the requestor. You also state HP did not submit its customer references to CPS.¹ You state CPS takes no position with regard to the release of the submitted information. However, you state the submitted information may implicate the proprietary interests of Xerox. Accordingly, you state and provide documentation showing that you notified Xerox of this request and of its opportunity to submit comments to this office explaining why the information at issue should be withheld from disclosure. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that 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 reviewed the submitted information.

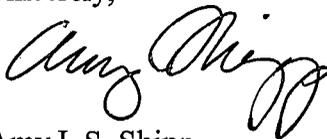
¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received any correspondence from Xerox. Thus, we have no basis to conclude that the release of any portion of Xerox's submitted customer reference information would implicate its proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, CPS may not withhold any portion of the submitted information on the basis of any proprietary interest Xerox may have in the information. As no exceptions to disclosure have been raised, the submitted information 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tp

Ref: ID# 388747

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jeff Legler
Xerox Corporation
100 North East Loop 410, Suite 625
San Antonio, Texas 78216
(w/o enclosures)