



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2010

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

OR2010-17233

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# 399916.

The City Public Service Board of the City of San Antonio, d/b/a CPS Energy ("CPS") received a request for all training and sales materials provided by Bobby Jones and Associates ("Jones"). Although you take no position on the requested information, you state it may contain proprietary information subject to exception under the Act. Accordingly, you state and provide documentation showing CPS notified Jones of the request for information and of its right to submit arguments to this office as to why the requested 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 an attorney for Jones, considered the submitted arguments, and reviewed the submitted information.

Initially, we note, and you acknowledge, CPS has not complied with the requirements of section 552.301 of the Government Code in requesting this decision. Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released unless a governmental body demonstrates a compelling reason to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock*

v. State Bd. of Ins., 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third-party interests are at stake, we will consider whether the submitted information must be withheld under the Act.

Next, we address Jones's claim that the present request is not a request for information under the Act. Jones argues the requestor "drafted the [request] with the intent to circumvent the statutory discovery process provided for under the state and federal civil procedures." Further, Jones states "a reasonable person would read the letter as a business requesting help from a client with litigation[.]" Section 552.0055 of the Government Code provides that "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter." Gov't Code § 552.0055. Upon review, we find Jones has not demonstrated, and the request does not indicate, that the information was otherwise requested pursuant to the authority of a statute or a rule of civil or criminal procedure. Although discovery in a contested case is conducted under the Texas Rules of Civil Procedure, there is nothing that prevents the requestor from also submitting a request for information under the Act. Therefore, we find CPS received a request for information under the Act, and we will address whether CPS is required to release the submitted information pursuant to chapter 552 of the Government Code.

Jones raises section 552.110(b) of the Government Code, which protects "[c]ommercial 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). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 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). Upon review, we find that Jones has established that its submitted information constitutes commercial or financial information, the release of which would cause Jones substantial competitive injury. Accordingly, CPS must withhold Jones's submitted information under section 552.110(b) of the Government Code.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 399916

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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