



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 16, 2011

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

OR2011-03623

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# 411277.

The City Public Service Board of the City of San Antonio d/b/a CPS Energy ("CPS") received requests from two different requestors for (1) the bid tabulation and original awarded vendor's bid from CPS's last bid for gas fuel, as well as the tabulations for the bid that opened up on September 23, 2010, and (2) the winning bidder's pricing information for the fuel bid dated September 23, 2010. Although you state CPS takes no position with respect to the public availability of the requested information, you state its release may implicate the proprietary interests of Petroleum Traders Corporation, RKA Petroleum Companies, Inc., and SC Fuels. Accordingly, you state, and provide documentation showing, the system notified these companies of the request and of each company's right to submit arguments to this office as to why the submitted bid information 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 must address CPS's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of

receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state CPS received the request for information on December 14, 2010. You did not, however, submit a copy of the information requested until January 6, 2011. Thus, we find CPS failed to comply with the requirements of section 552.301.

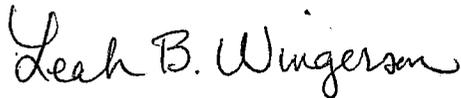
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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 section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider whether or not any of the submitted information is excepted from disclosure under the Act.

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). CPS has provided correspondence from a representative of SC Fuels to CPS reflecting the representative stated, without any explanation, SC Fuels's bid information is confidential and SC Fuels does not want its information released. As of the date of this letter, however, we have not received comments from SC Fuels, or either of the other two notified third parties, explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of these companies have protected proprietary interests in this 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 (1990). Consequently, CPS may not withhold any of the submitted bid information on the basis of any proprietary interests the third parties may have in the information. As no exceptions to disclosure have been claimed, the submitted information 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 411277

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

Ms. Christina Nasser  
RKA Petroleum Companies, Inc.  
c/o Mr. Kipling D. Giles  
Senior Counsel  
CPS Energy  
P.O. Box 1771  
San Antonio, Texas 78296  
(w/o enclosures)