



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2009

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-11945

Dear Ms. Chang:

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# 353291.

The City of Houston (the "city") received a request for the name, address, and phone number of seven specified online auction bidders. You claim a portion of the submitted information is excepted from disclosure under section 552.137 of the Government Code. You also assert that the request for information may implicate the proprietary interests of The Public Group, L.L.C. d/b/a Public Surplus ("Public Surplus"). You have notified Public Surplus of the city's receipt of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code § 552.305(d); see also 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 to disclosure in certain circumstances).* We have received arguments from Public Surplus. We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).*

Initially, we note that the requestor is seeking only the name, address, and phone number of the registered bidders at issue. Thus, the remaining submitted information is not responsive to this request. This ruling does not address the public availability of nonresponsive information, which we have marked, and the city is not required to release nonresponsive

information in response to this request. Accordingly, we will only address your arguments with regard to the responsive information.

We next address Public Surplus's contention that the responsive information is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Furthermore, the Act applies to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987).

Public Surplus acknowledges the city has a right of access to certain bidder information "for the purpose of evaluating the likelihood of performance by a particular bidder and consummating the purchase with a winning bidder." Thus, although certain bidder information may well be created or held by Public Surplus for its own purposes, this information has also been provided to the city by Public Surplus for the city's use of the online auction system. As the city is provided such bidder information for its use of the online auction system, we conclude that the city has a right of access to such information. *See* Gov't Code § 552.002(a)(2). Further, the submitted information is in the possession of the city, which is a governmental body as defined by section 552.003, and was collected, assembled, or maintained in connection with the transaction of the city's official business. Thus, such information constitutes public information under section 552.002(a). *Id.*; *see also* *Baytown Sun v. City of Mont Belvieu*, 145 S.W.3d 268, 271 (Tex. App.—Houston [14th Dist.] 2004, no pet. h.) (governmental body that was entitled to inspect books and records of contracting party had right to access to its payroll account records). We therefore conclude that the submitted information is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002(a), .021.

Public Surplus contends the submitted information is subject to section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for

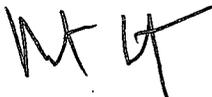
which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision 661 at 5-6 (1999).

Public Surplus asserts that the bidder information at issue is “key to Public Surplus’ competitive advantage” and that “Public Surplus has compiled the data over years of its operation and at expense in the millions of dollars.” Public Surplus further asserts that release on the information at issue “would cause [it] substantial competitive harm[.]” by allowing others to “approach those bidders and significantly reduce or undercut the market for similar or other surplus goods sold on Public Surplus’ site.” Having considered the submitted arguments and reviewed the information at issue, we conclude Public Surplus has established the release of its bidder identification and contact information would cause it substantial competitive injury; therefore, the city must withhold the submitted responsive information under section 552.110(b) of the Government Code.¹

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 at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 353291

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Richard W. Sheffield
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(w/o enclosures)