



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2014

Mr. Jeffrey Giles  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2014-07514

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# 521702 (GC No. 21182).

The City of Houston (the "city") received a request for information pertaining to prior bidders and buyers of city vehicles and equipment. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of this information may implicate the proprietary interests of a third party. Accordingly, you inform us you notified The Public Group, LLC, d/b/a Public Surplus ("Public Surplus") of the request and of its right to submit comments to this office as to why the information at issue should not be released. *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 statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Public Surplus. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, you inform us some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2010-00065 (2010). In that ruling, we determined, in part, the city must withhold the information at issue under section 552.110(b) of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the city must continue to rely on Open Records Letter No. 2010-00065 as a previous determination, and withhold the requested information that is identical to the information that was at issue in Open Records Letter No. 2010-00065 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We next address Public Surplus' contention that the requested information is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code § 552.021. Section 552.002(a) of the Government Code defines "public information" as follows:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*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). The Act also applies to information that a governmental body does not physically possess, if the information is written, produced, 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 written, produced, 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. 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 and maintained in connection with the transaction of the city's official business. Thus, such information constitutes public information under section 552.002(a). Therefore, we conclude 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 claims the submitted information is excepted from disclosure under 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[.]" Gov't Code § 552.110(b). This exception to disclosure 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. *See id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

Public Surplus asserts the information at issue, consisting of a bidder's identification and contact information, 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 of 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." Upon review, we conclude Public Surplus has established the release of the information at issue would cause it substantial competitive injury. Therefore, the city must withhold the bidder identifying and contact information, which we have marked, under

section 552.110(b) of the Government Code.<sup>2</sup> The city must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/akg

Ref: ID# 521702

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Jason N. Dixon  
General Counsel  
The Public Group  
P.O. Box 50676  
Provo, Utah 84605  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.