ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2014

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2014-22012

Dear Ms. Silver:

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# 545670.

The City of Dallas (the "city") received two requests from the same requestor for certain information regarding city contractors Denali and Unisys Corporation ("Unisys") submitted to the city during a specified time period and information regarding a specified request for proposals. You state the city does not have information responsive to a portion of the request.[1] Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Unisys. Accordingly, you state, and provide documentation showing, you notified Unisys of the requests for information and of its right to submit arguments to this office as to why the submitted 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

[1]The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

exception in the Act in certain circumstances). We have received comments from Unisys. We have considered the submitted arguments and reviewed the submitted information.[2]

Unisys raises section 552.110(b) of the Government Code for some of its information. 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, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999).

Unisys contends some of the submitted information, including its customer information, is commercial or financial information, the release of which would cause substantial competitive harm. Upon review, we find Unisys has demonstrated its customer information constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, to the extent Unisys's customer information is not publicly available on its website, the city must withhold Unisys's customer information under section 552.110(b). However, we find Unisys has failed to demonstrate that the release of any of the remaining information would result in substantial harm to its competitive positions. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). Accordingly, none of the remaining information may be withheld under section 552.110(b). As no further exceptions to disclosure have been raised, 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.

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[2]We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interests of a third party can provide a compelling reason to overcome the presumption of openness, we will consider Unisys's arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

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, 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,

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 545670

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)