



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2011

Ms. Constance K. Acosta
For City of Friendswood
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2011-12382

Dear Ms. Acosta:

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# 428158.

The City of Friendswood (the "city"), which you represent, received a request for the most current listing of "Commercial Units and Light Commercial Units" related to a specified contract between the city and IESI. You state the city does not maintain the requested information. You further state release of the requested information may implicate the proprietary interests of IESI. Accordingly, you have notified IESI of the request and of its right to submit arguments to this office as to why its information should not be released.¹ *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered your submitted comments.²

We note the Act is applicable to "public information." *See Gov't Code §§ 552.002, .021.* Section 552.002(a) provides that "public information" consists of

¹As of the date of this letter, we have not received comments from IESI.

²Although the city asks this office to consider whether the requested information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body.

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 in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision Nos. 558 at 2 (1990), 462 at 4 (1987).

You state IESI maintains the requested information. We note the Act generally does not require a governmental body to obtain information not in its possession. *See* ORD 558 at 2 (1990) (Act not applicable if governmental body does not have right of access to or ownership of information prepared for it by an outside entity), 445 at 2 (Act not applicable to information governmental body never possessed or was entitled to receive). Thus, the Act does not require a governmental body to release information if the governmental body that receives the request has neither possession of the information nor a right of access to it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989). You also state, and provide documentation confirming, the city has a contract with IESI that requires IESI to release the requested information to the city.³ You state IESI refuses to release the requested information to the city because the requestor and IESI "are direct competitors and often vie for the same municipal contracts." Upon review of your comments and the city's submitted contract with IESI, we conclude the city has a right of access to the requested information. Accordingly, the requested information constitutes information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by [or] for" the city for purposes of section 552.002 of the Government Code. *See* Gov't Code § 552.002(a)(1)-(2). Therefore, the requested information is subject to the Act. Accordingly, as no exceptions against disclosure are raised, the city must release the requested information.

³We note that whether a party to a contract with a governmental body is an independent contractor and/or an agent is not dispositive of whether information held by the party is subject to the Act. *See* Open Records Decision No. 462 at 4-5 (1987). We also note a governmental body cannot compromise its obligations under the Act simply by deciding to enter into a contract. *See* Open Records Decision Nos. 541 at 4 (1990), 514 at 1 (1988).

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 428158

No submitted documents

c: Requestor

Ms. Janet Bettcher
District Sales Coordinator
IESI - South Texas District
P.O. Box 1508
Alvin, Texas 77512
(Third party)