



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 5, 2015

Mr. Ronny H. Wall  
Associate General Counsel  
Texas Tech University  
P.O. Box 42021  
Lubbock, Texas 79409-2021

OR2015-08719

Dear Mr. Wall:

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# 562301.

Texas Tech University (the "university") received a request for information pertaining to concert contracts between the university, the United Supermarkets Arena, and three named musicians for concerts on specified dates. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.152 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of the AEG Live ("AEG") and American Collegiate Talent Showcase, Inc. ("ACTS"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have protected proprietary interests in the submitted 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. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest these third parties may have in the information.

Section 552.104 of the Government Code excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 592 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988). Furthermore, section 552.104 generally does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1983) (suggesting such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis). *But see* ORD 541 at 5 (construing statutory predecessor and noting duration of coal transportation contract and unique services provided under contract make it highly unlikely the governmental body at issue would solicit coal transportation services again in near future).

You state the university has specific marketplace interests in the submitted information because the university and the university’s facility, United Supermarkets Arena (the “arena”), competes with other rental venues in the region to attract performers to rent and perform in the arena. You state releasing the submitted information would give competitors insight into the arena’s rental structure and services, and would allow competitors to undercut the arena’s pricing. Further, you state release of the submitted information will harm the university’s relationship with agents and promoters, “who will be discouraged from bringing future acts

to the [arena] due to release of information [the agents and promoters] consider private.” Based on these representations and our review, we find the university has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Further, we the university has demonstrated release of the information at issue would cause specific harm to the university’s marketplace interests in a particular competitive situation. Accordingly, the university may withhold the submitted information under section 552.104 of the Government Code.<sup>1</sup>

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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

Ref: ID# 562301

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Jason Bernstein  
AEG Live  
5050 Wilshire Boulevard, Suite 501  
Los Angeles, California 90036  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure.

Ms. Barbara Hubbard  
American Collegiate Talent Showcase, Inc.  
P.O. Box 1736  
Las Cruces, New Mexico 88004  
(w/o enclosures)