



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2015

Ms. Ana Vieira Ayala
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-13666

Dear Ms. Ayala:

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# 570316 (OGC# 161361).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for information relating to a specified request for proposals. You state the university has released some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of MasterWord, Inc. ("MasterWord"). Accordingly, you state, and provide documentation showing, you notified MasterWord of the request 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 exception in the Act in certain circumstances). We have received comments from MasterWord. We have considered the submitted arguments and reviewed the submitted information.

MasterWord raises section 552.104 of the Government Code for portions of the submitted information. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, slip op. at 13 (Tex. June 19, 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 17. MasterWord states the industry in which it operates is "fiercely competitive." Further, MasterWord states the information it has indicated, if released,

would give an advantage to a competitor or fellow bidder. After review of the information at issue and consideration of the arguments, we find MasterWord has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the information we have marked under section 552.104(a) of the Government Code.¹

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the university may withhold the information we have marked under section 552.104(a) of the Government Code. The university must release the remaining information; however, the university may only release information subject to copyright in accordance with copyright law.

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, 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

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

Ref: ID# 570316

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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