



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2016

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

OR2016-08619

Dear Ms. Burnett:

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# 606181 (OGC#s 167320 and 167538).

The University of Texas at El Paso (the "university") received two requests from different requestors for information related to a specified rental of the Sun Bowl Stadium (the "stadium"). You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of the Catholic Diocese of El Paso. Accordingly, you notified this third party of the request for information and of its right to submit arguments stating why the information 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 considered the exception you claim and reviewed the submitted information.

Initially, we note the first requestor has asked the university to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to information held by the governmental body. *See* Open Records

Decision No. 561 at 8 (1990). We assume the university has made a good faith effort to do so.

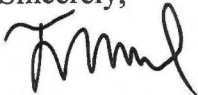
Next, we note a portion of the submitted information, which you have marked, is not responsive to the present requests for information. This ruling does not address the public availability of non-responsive information, and the university need not release it in response to these requests for information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state the submitted information relates to the stadium, which “is operated as a revenue-generating special use facility within the [u]niversity.” You state “[i]n order for [the stadium] to generate revenue on behalf of the [u]niversity, the [u]niversity must contract with entities seeking a venue to hold events.” You inform this office “[t]hese contracts are negotiated on a continuous year-round basis.” You assert release of the responsive information would “hamper the [u]niversity’s ability to enter into future agreements” by revealing the university’s rental rates and negotiating strategy. After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the responsive information under section 552.104(a) of the Government Code.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 606181

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)