



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 31, 2016

Ms. Ana Vieira Ayala  
Senior Attorney  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street, Suite 600  
Austin, Texas 78701

OR2016-24179

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# 632474 (OGC # 171228).

The University of Texas System (the "system") received a request for contract award information and any bid results for three specified solicitations. You state the requestor has agreed to withdraw her request for information pertaining to one of the specified solicitations. You state you do not maintain some of the requested information.<sup>1</sup> You state you have released some of the requested information. Although you do not take any position as to whether the submitted information is excepted from disclosure under the Act, you state release of the information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted 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

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<sup>1</sup>The Act does not require a governmental body to answer factual questions, conduct legal research, release information that does not exist, or create responsive information in response to a request for information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 received comments from Ernst & Young (“Ernst”), Global Info Intelligence, LLC (“Global”), Janus Associates, Inc. (“Janus”), and Grant Thornton (“Grant”). We have considered the submitted arguments and reviewed the submitted information.

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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As noted above, as of the date of this letter, we have only received comments from Ernst, Global, Janus, and Grant explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have a protected proprietary interest 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 system may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Next, we note Ernst and Grant seek to withhold information not submitted to this office by the system. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the system, this ruling does not address this information and is limited to the information submitted as responsive by the system.

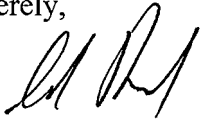
Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Ernst, Global, Janus, and Grant state they have competitors. In addition, they state release of the information at issue would reveal commercial and financial information which would provide competitors an advantage. After review of the information at issue and consideration of the arguments, we find Ernst, Global, Janus, and Grant have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information we have indicated under

section 552.104(a) of the Government Code.<sup>2</sup> The system 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.

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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/akg

Ref: ID# 632474

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

7 Third Parties  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the third parties' remaining arguments against disclosure of this information.