



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 29, 2016

Ms. Ana Vieira Ayala
Assistant General Counsel & Public Information Coordinator
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2016-28613

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# 639703 (OGC# 172159).

The University of Texas System (the "system") received a request for the questions administered in three specified examinations. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. You also state release of the submitted information may implicate the interests of a specified third party. Accordingly, you inform us, and provide documentation demonstrating, you notified The SawGrass Group, Inc. ("SawGrass") of the request for information and of its right to submit arguments stating why its 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 received comments from SawGrass. We have considered the submitted arguments and reviewed the submitted information.

SawGrass states the submitted information is excepted from disclosure under section 552.104 of the Government Code. 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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 839 (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. SawGrass states it has competitors. In addition, SawGrass states release of the information at issue would provide an unfair competitive advantage its competitors. After review of the information at issue and consideration of the arguments, we find SawGrass has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 639703

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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