



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 15, 2017

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
201 West 7<sup>th</sup> Street, Suite 600  
Austin, Texas 78701

OR2017-03474

Dear Ms. Tynan:

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# 645874 (OGC# 172936).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for a specified contract. 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 proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified Texas Window Cleaning Services ("TWCS") 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 TWCS. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code for the submitted information, which 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, 841 (Tex. 2015). You state the submitted information pertains to a competitive bidding situation because a

“[request for proposals] for the same services is currently open and no contract has been executed at this time.” In addition, you state the bidding process is ongoing and release of the submitted information would “provide bidders with unfair insight into the qualifications, reputations, and experience of the current provider, placing the [u]niversity at a competitive disadvantage.” After review of the submitted information and consideration of the arguments, we find the university has established the release of the submitted information would give an advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted information under section 552.104(a) 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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/sdk

Ref: ID# 645874

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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