



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2017

Ms. Jennifer Burnett
Attorney and Public Information Coordinator
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2017-07274

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# 652203, (OGC # 173407).

The University of Texas System (the "system") received a request for bid tabulations and documentation pertaining to a specified contract. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state you notified Veolia ES Technical Solutions, LLC. ("Veolia") 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 an attorney on behalf of Veolia. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2012-16531 (2012), this office ruled that the system must withhold certain information under section 552.110(a) of the Government Code, 552.110(b) of the Government Code, and section 552.136 of the Government Code, and that the remaining information must be released, but any information protected by copyright could only be released in accordance with copyright law. We note, however, neither the system nor Veolia raised section 552.104 in their comments to our office for

Open Records Letter No. 2012-16531 and now, both seek to withhold some of the submitted information under section 552.104 of the Government Code. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the system may not now withhold any of Veolia's information previously ordered released in Open Records Letter No. 2012-16531 unless its release is expressly prohibited by law or the information is confidential by law. Although the system and Veolia raise section 552.104 of the Government Code, this exception does not prohibit the release of information or make information confidential. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the system may not now withhold any of Veolia's information that was previously ordered released in Open Records Letter No. 2012-16531 under section 552.104 of the Government Code. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon, the system must continue to rely on Open Records Letter No. 2012-16531 as a previous determination, and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the submitted information is not encompassed by the prior ruling, we will consider the submitted arguments.

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 represent the submitted information pertains to a competitive bidding situation. In addition, you state the system is currently preparing a new request for proposal ("RFP") for the same services. You state release of the information at issue, at this time before a final, executed contract from the new RFP is in place, would greatly disadvantage the system in obtaining a fair contract. After review of the information at issue and consideration of the arguments, we find the system 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 information at issue under section 552.104(a).¹

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon, we conclude the system must continue to rely on Open Records Letter No. 2012-16531 as a previous determination, and withhold or release the identical information in accordance with those rulings. The system may withhold the remaining information under section 552.104(a).

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/nmd

Ref: ID# 652203

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.