



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2017

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

OR2017-07904

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# 653278 (OGC# 173068).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for active lease and maintenance agreements for copier, printer, and facsimile equipment and two recent invoices with the current vendor.¹ 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 Konica Minolta Business Solutions U.S.A., Inc. ("Konica"). Accordingly, you state you notified Konica 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 Konica.

¹We note the university sent the requestor an estimate of charges for portions of the requested information pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the university received the required deposit on January 23, 2017. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

We have reviewed the submitted arguments and the submitted representative sample of information.²

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 information at issue relates to an existing contract executed by the university. However, you explain the same services are currently being procured. Further, you state the university has not executed a final agreement relating to the current open solicitation. You contend release of the information at issue at this time would disadvantage the university’s ability to obtain fair contracts related to the current solicitation. Based on your representations and our review, we conclude the university may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Ref: ID# 653278

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)