



KEN PAXTON

ATTORNEY GENERAL OF TEXAS

April 13, 2017

Ms. Jennifer Burnett
Attorney and Public Information Coordinator
University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2902

OR2017-07945

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# 653824 (OGC# 173591).

The University of Texas System (the "system") received a request for requests for qualifications, requests for proposals, bid tabulations, a construction manager at risk contract, and all change orders and amendments to the construction manager at risk contract pertaining to a specified project. You state you will release some information. Although the system takes no position as to whether the submitted information is excepted under the Act, the system informs us release of this information may implicate the proprietary interests of KBR Building Group, LLC; Linbeck Group, LLC; and SpawGlass Contractors, Inc. ("SpawGlass"). Accordingly, the system states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 SpawGlass. 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) of the Government Code 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 of the date of this letter, we have not received comments from the remaining third parties 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest these third parties may have in the information.

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 (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. SpawGlass argues if their records and information were released at this time, such information would give an unfair advantage to a competitor or bidder and interfere with both SpawGlass’s interests. After review of the information at issue and consideration of the arguments, we find SpawGlass has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold SpawGlass’s information under section 552.104(a) of the Government Code.¹ As no other exceptions to disclosure are raised, the remaining information must be released.

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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/nmd

¹As our ruling is dispositive, we need not address the SpawGlass’s remaining argument against disclosure.

Ref: ID# 653824

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third parties
(w/o enclosures)