



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2017

Ms. Jennifer Burnett  
Attorney and Public Information Coordinator  
Office of the General Counsel  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2901

OR2017-08128

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# 657086 (OGC# 173937).

The University of Texas of the Permian Basin (the "university") received a request for information pertaining to specified performances at the Wagner Noel Performing Arts Center (the "center"). The university claims the requested information is excepted from disclosure under section 552.104 of the Government Code. The university also states, and provides documentation showing, it notified SMG, an interested third party, of the university's receipt of the request for information and of SMG's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 considered the claimed exception and reviewed the submitted information.

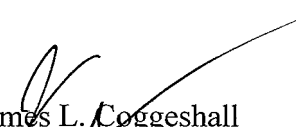
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The university states the center is operated as a revenue-generating special use facility and it has contracted with SMG to manage, operate,

and promote the facility. The university also explains, “[i]n order for this event center to generate revenue on behalf of the [u]niversity, SMG, on behalf of the [u]niversity, must contract with entities seeking a venue to hold events.” The university informs us “[t]hese contracts are negotiated on a continuous year-round basis” and asserts release of the submitted information would “hamper the [u]niversity’s ability to enter into future agreements that maximize the potential benefit to the [u]niversity.” For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to the *Boeing* decision, section 552.104 is not limited to only ongoing competitive situations, and it need only be shown release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. Upon review, we find the university has established release of the submitted information would give 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.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 657086

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)