



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 19, 2017

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
201 West 7th Street, Suite 600  
Austin, Texas 78701-2901

OR2017-08372

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# 654121 (OGC# 173478).

The University of Texas System (the "system") received a request for information relating to the winning bids for a specific request for proposals. You state you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Lois L. Lindauer Searches, LLC ("LLLS") and Wheless Partners ("Wheless"). Accordingly, you state, and provide documentation showing, you notified LLLS and Wheless of the request for information and of their 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 LLLS. We have considered the submitted argument and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Wheless. Thus, we have no basis to conclude Wheless has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the system may not withhold any of the submitted information on the basis of any proprietary interest Wheelless may have in the information.

Next, we note LLLS objects to disclosure of information the system has not submitted to this office for review. This ruling does not address information that was not submitted by the system and is limited to the information the system has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

We note the submitted information contains a contract for the purchase of services from a private vendor that is subject to the posting requirements in section 2261.253 of the Government Code. Section 2261.253(a) provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

*Id.* § 2261.253(a)(1). The contract at issue is valued at more than \$15,000, is between the system, which is a state agency, and a private vendor for the purchase of services, and the contract is not expired or completed. *See id.* §§ 2261.002(2) (“state agency” has meaning assigned by Gov't Code § 2151.002), 2151.002(3) (“state agency” includes university system or institution of higher education as defined by Educ. Code § 61.003). Accordingly, the contract at issue is required to be posted on the system's internet website. Although LLLS seeks to withhold the information at issue under section 552.104 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the system must release the contract at issue in its entirety. However, we will address LLLS's argument against disclosure of the information not subject to section 2261.253 of the Government Code.

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. LLLS states it has competitors. In addition, LLLS states release of the information at issue would give advantage to its competitors. After review of the

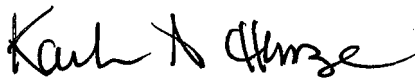
information at issue and consideration of the arguments, we find LLLS has established the release of the information at issue, which we have marked, would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information we have marked under section 552.104(a) of the Government Code.

In summary, the system must release the contract at issue pursuant to section 2261.253 of the Government Code. The system may withhold the information we have marked under section 552.104(a) of the Government Code. The system must release the remaining information.

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,



Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/eb

Ref: ID# 654121

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)