



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 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

OR2017-08975

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# 655140 (UT OGC# 173696).

The University of Texas System (the "system") received a request for information pertaining to Request for Proposals No. OTS12212015. Although the system takes no position as to whether the submitted information is excepted under the Act, the system states release of the submitted information may implicate the proprietary interests of Lonestar Education and Research Network ("LEARN"). Accordingly, the system states, and provides documentation showing, it notified LEARN 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 LEARN. We have reviewed the submitted information and the submitted arguments.

LEARN raises section 552.104 of the Government Code for the submitted information. Section 552.104(a) 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. LEARN states it has competitors. In addition, LEARN states release of the submitted information would “provide competitors and bidders with an unfair insight into LEARN’s pricing structure used to respond to the request for proposal[s], which . . . places LEARN at a competitive disadvantage.” After review of the information at issue and consideration of the arguments, we find LEARN 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 submitted information under section 552.104(a) of the Government Code.¹

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/som

Ref: ID# 655140

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹As our ruling is dispositive, we need not address LEARN’s remaining argument against disclosure of the submitted information.