



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 2, 2017

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

OR2017-12106

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# 660320 (OGC #174672).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for information related to a specified bid. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Daniel J. Edelman, Inc. ("Edelman"). Accordingly, you state, and provide documentation showing, you notified this third party 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 Edelman. We have reviewed the submitted information and the submitted arguments.

Initially, you inform us some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-04445 (2017). In that ruling, we concluded (1) the university may withhold the information it marked under section 552.111 of the Government Code; (2) the university may withhold Finn Partners' information in its entirety, as well as Edelman's information it indicated, under section 552.104(a) of the Government Code; and (3) the remaining information must be released. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude

the university must rely on Open Records Letter No. 2017-04445 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address the submitted arguments for the information that is not subject to Open Records Letter No. 2017-04445.

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). Although Edelman seeks to withhold the information at issue under sections 552.104 and 552.110 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 university must release the contract at issue in its entirety. However, we will address Edelman’s argument against disclosure of the information not subject to section 2261.253 of the Government Code.

Edelman asserts its information is protected under section 552.104 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. Edelman states it has competitors. In addition, Edelman states the information at issue, if released, would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find Edelman has established the release of the remaining information would give advantage to a competitor or bidder.

Thus, we conclude the university may withhold the remaining information under section 552.104(a) of the Government Code.<sup>1</sup>

In summary, the university must rely on Open Records Letter No. 2017-04445 as a previous determination and withhold or release the identical information in accordance with that ruling. The university must release the contract at issue pursuant to section 2261.253 of the Government Code. The university may withhold the remaining 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,



Emily Buchanan  
Assistant Attorney General  
Open Records Division

EB/eb

Ref: ID# 660320

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.