



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 8, 2017

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street, Suite 600
Austin, Texas 78701-2901

OR2017-12670

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# 661113 (OGC# 174755).

The University of Texas M. D. Anderson Cancer Center (the "university") received a request for contracts between the university and two specified health care groups over a specified time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also state you notified Summit Medical Group, P.A. ("Summit") and The Cooper Health System ("Cooper") 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 Summit and Cooper. We have considered the submitted arguments and reviewed the submitted information.

¹You state the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, you state some of the submitted information is not responsive to the instant request because it does not consist of the requested contracts. This ruling does not address the public availability of any information that is not responsive to the request and the university is not required to release such information in response to this request.

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). You state the university has specific marketplace interests in the information at issue because the university competes with other healthcare providers. In addition, you state release of the information at issue would allow competitors to enhance their own positions in a competitive healthcare marketplace to the detriment of the university. After review of the information at issue and consideration of the arguments, we find the university has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the responsive information you indicated under section 552.104(a) of the Government Code.²

Additionally, a private third party may also invoke section 552.104(a) of the Government Code. *Id.* at 831. Cooper states it has competitors. In addition, Cooper states release of its information would allow competitors assess to “various proprietary and confidential information” and cause it a competitive disadvantage. 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 *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find Cooper has established the release of the information at issue would give advantage to

²As our ruling on this information is dispositive, we need not address the university’s remaining argument or the arguments of Cooper or Summit against disclosure of this information.

a competitor or bidder. Thus, we conclude the university may withhold information we indicated under section 552.104(a) of the Government Code.³

The university may withhold the responsive information you indicated and the additional information we indicated under section 552.104(a) of the Government Code. The university must release the remaining responsive 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, 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/bw

Ref: ID# 661113

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

³As our ruling on this information is dispositive, we need not address the remaining argument against disclosure of this information.