



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2017

Ms. Jennifer Burnett
Attorney & Public Information Officer
Office of the General Counsel
University of Texas System
210 West Seventh Street
Austin, Texas 78701

OR2017-14443

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# 663789 (OGC# 174931).

The University of Texas at Arlington (the "university") received a request for submissions related to a specified request for qualifications and request for proposals. 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 the following third parties of the university's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released: American Campus Communities; Balfour Betty Campus Solutions ("Balfour"); Capstone Development Partners, L.L.C. ("Capstone"); EdR Colegiate Housing; and University House Communities Group, Inc. *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 received comments from Balfour and Capstone objecting to the release of some of the information at issue. We have considered the submitted arguments and reviewed the submitted information.

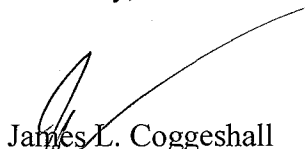
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). The university states the submitted

proposals pertain to a request for proposals (“RFP”) that was cancelled and no contract was awarded. However, we understand the university to assert the RFP at issue will be rebid. The university also argues release of the submitted information would impair its efforts at procuring and negotiating its future contract with the chosen vendor for the same services at issue. 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 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 663789

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we do not address the remaining arguments to withhold this information.