



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 28, 2017

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
University of Texas System  
201 West 7th Street, Suite 600  
Austin, Texas 78701-2901

OR2017-17009

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# 668598 (OGC# 175577).

The University of Texas at Austin (the "university") received a request for information pertaining to a specified bid.<sup>1</sup> 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 Hollman, Inc. and Longhorn Locker Company, LLC ("Longhorn Locker"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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 Longhorn Locker. We have considered the submitted arguments and reviewed the submitted information

---

<sup>1</sup>We note 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 when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude this third party has a protected proprietary interest in the information at issue. *See id.* § 552.110; 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 university may not withhold any of the information at issue on the basis of any proprietary interest this third party may have in the 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. Longhorn Locker states it has competitors. In addition, Longhorn Locker states the information at issue, if released, could allow a competitor to take the detailed data in the bidding information and use it to determine Longhorn Locker's business strategy in creating its bidding packages and pricing structures. Longhorn Locker also states release of the information would allow competitors to underbid Longhorn Locker in future business contracts, which would give any competitor an extreme advantage. After review of the information at issue and consideration of the arguments, we find Longhorn Locker has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold Longhorn Locker's information under section 552.104(a) of the Government Code.<sup>2</sup> As no other exceptions to disclosure are raised, the university 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/>

---

<sup>2</sup>As our ruling is dispositive, we need not address Longhorn Locker's remaining argument against disclosure of its information.

[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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a long, sweeping flourish extending to the right.

D. Michelle Case  
Attorney  
Open Records Division

DMC/sdk

Ref: ID# 668598

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)