



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 10, 2017

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

OR2017-18223

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# 670508 (OGC# 175390).

The University of Texas System (the "system") received a request for information pertaining to a specified request for proposals and request for qualifications.<sup>1</sup> Although you take no position as to whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of third parties.<sup>2</sup> Accordingly, you state and provide documentation showing you notified these third parties of the request for information and of each company's right to submit arguments to this office

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<sup>1</sup>We note the system 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).

<sup>2</sup>The system notified the following third parties: Atkins North America, Inc.; Ayers Saint Gross; Barnes Gromatsky Kosarek Architects; Boka Powell + Pelli Clarke Pelli; EYP Architecture & Engineering; M. Arthur Gensler, Jr. & Associates, Inc. d/b/a Gensler; Harrison Kornberg Architects, LLC; Hill & Wilkinson General Contractors ("Hill"); HKS Inc.; Holder Construction Group LLC ("Holder"); JE Dunn; Kirksey Architecture ("Kirksey"); KSQ Architects d/b/a KSQ Design; Lawrence Group ("LG"); Overland Partners Inc.; Page Southerland Page, Inc.; PGAL; Stantec Architecture Inc.; Susman Tisdale Gayle Architects, Inc. d/b/a STG Design, Inc.; SpawGlass; TreanorHL; and Whiting-Turner Contracting Company.

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 Act in certain circumstances). We have received comments from Hill, Holder, Kirksey, LG, and PGAL. We have considered the submitted arguments and reviewed the submitted information.

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) 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 parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have a protected proprietary interest in the submitted information. *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 system may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Next, we note Holder seeks to withhold information not submitted to this office by the system. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the system, this ruling does not address this information and is limited to the information submitted as responsive by the system.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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. Hill, Holder, Kirksey, and PGAL state they have competitors. Hill, Holder, Kirksey, and PGAL also state release of their information at issue would provide competitors with an unfair advantage in future competitive bids. After review of the information at issue and consideration of the arguments, we find Hill, Holder, Kirksey, and PGAL have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold all of Hill's and Kirksey's information, Holder's

information we marked, and the information PGAL indicated under section 552.104(a) of the Government Code.<sup>3</sup>

LG claims portions of its information are excepted under section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

LG contends some of its information is commercial or financial information, the release of which would cause substantial competitive harm to the company. Upon review, we find LG has demonstrated this information constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the system must withhold the information we marked under section 552.110(b) of the Government Code.<sup>4</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>5</sup> Gov’t Code § 552.130. Upon review, we find the system must withhold the motor vehicle record information in the remaining information under section 552.130 of the Government Code.

In summary, we conclude the system may withhold all of Hill’s and Kirksey’s information, Holder’s information we marked, and the information PGAL indicated under section 552.104(a) of the Government Code. The system must withhold LG’s information we marked under section 552.110(b) of the Government Code. The system 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.

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>4</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

<sup>5</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in cursive script that reads "D. Michelle Case". The signature is written in black ink and includes a stylized flourish at the end.

D. Michelle Case  
Attorney  
Open Records Division

DMC/sdk

Ref: ID# 670508

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

22 Third Parties  
(w/o enclosures)