



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 29, 2017

Mr. R. Brooks Moore  
Deputy General Counsel  
The Texas A&M University System  
301 Tarrow Street, 6th Floor  
College Station, Texas 77840-7896

OR2017-22335

Dear Mr. Moore:

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# 677816 (Ref No. R001283-071317).

Texas A&M University-Kingsville (the "university") received a request for bid results pertaining to two specified bids. You state you do not have responsive information pertaining to one of the specified bids.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim 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 (Tex. 2015). You represent the submitted information pertains to a competitive bidding situation. In addition, you state the bid at issue will be rejected and the university "may re-bid the project." You assert "release of the requested

---

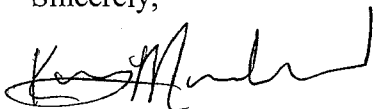
<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

records would interfere with the bidding process and harm the university's ability to negotiate a final agreement[.]” 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 university may withhold the submitted 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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/gw

Ref: ID# 677816

Enc. Submitted documents

c: Requestor  
(w/o enclosures)