



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2017

Mr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
208 East 10th Street, Suite 600
Austin, Texas 78701

OR2017-22847

Dear Mr. Gomez:

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# 678895.

Lamar University (the "university") received a request for certain information pertaining to a specified request for proposals issued by the university. You state the university will release some information to the requestor. Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of Compass Group USA, Inc. d/b/a Chartwells ("Chartwells").¹ Accordingly, you state you notified Chartwells of the request for information and of its right 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 Chartwells. We have considered the submitted arguments and reviewed the submitted information.

¹We note the university did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nevertheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third-party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

Initially, we note Chartwells contends some of the submitted information is not responsive to the present request for information because it is not currently part of the requested contract. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the university has reviewed its records and determined the documents at issue are responsive to the present request. Thus, we find the university has made a good-faith effort to relate the request to information within its possession or control on the date the university received the request. Accordingly, we will determine whether the university must release this information to the requestor under the Act.

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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, 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. Chartwells states it has competitors. In addition, Chartwells states release of the information at issue would give an advantage to its competitors and seeks to withhold the terms of the contract. 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 Chartwells 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 information we have indicated under section 552.104(a) of the Government Code.² The university must release the remaining information.

²As our ruling is dispositive, we need not address the remaining argument against disclosure of this 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 678895

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)