



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2017

Mr. Ronny H. Wall
Associate General Counsel
Office of General Counsel
Texas Tech University System
P.O. Box 45031
Lubbock, Texas 79409-5031

OR2017-28973

Dear Mr. Wall:

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# 688966.

Texas Tech University (the "university") received a request for any communications between the university's athletic department and the Big 12 Conference (the "Big 12") and communications among university officials during a specified time period regarding conference football schedules. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state, and provide documentation showing, you notified the Big 12 and ESPN, Inc. ("ESPN"), of the request for information and of their right to submit arguments to this office 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 the Act in certain circumstances). We have received comments from the Big 12 and ESPN. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we have marked, and the university need not release it in response to this request.

The university and the Big 12 argue some of the submitted information is not subject to the Act. The Act is only applicable to “public information.” *See id.* § 552.021. Section 552.002 of the Government Code defines “public information” as the following:

[I]nformation that written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The university contends Exhibit B was e-mailed by the Big 12 to the university’s athletic director in his capacity as a member of the Big 12’s board of directors, and not in performance of his

duties for the university. Thus, the university asserts the information at issue was not written, produced, collected, assembled, or maintained in connection with the transaction of any official business of the university. Having considered the university's arguments and reviewed the information at issue, we find Exhibit B was not "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the university. Gov't Code § 552.002; *see* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). We therefore conclude Exhibit B is not subject to the Act and the university is not required to release this information in response to the instant request for information.¹ The Big 12 also contends Exhibit C is not subject to the Act because the information was generated by the Big 12, which is not a governmental body. We note, however, the information at issue consists of e-mails and attachments between the university, the Big 12, and ESPN that were sent to the university and are in the possession of the university. Furthermore, this information was collected, assembled, or maintained in connection with the transaction of the university's official business, and the university has submitted this information as being subject to the Act. Thus, Exhibit C is subject to the Act and must be released, unless the information falls within an exception to public disclosure 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). 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). The Big 12 and ESPN each state they have competitors. The Big 12 states release of the information at issue would place it at a disadvantage in contract negotiations with television broadcasting networks for the 2018 football season. The Big 12 also states release of the information at issue would give its competitors a competitive advantage by allowing insight into its strategies for determining football schedules. ESPN explains its football broadcast event agreements are not standard, and release of the information at issue would provide its competitors with an advantage in future negotiations. ESPN also states the release of the information at issue would give its competitors the ability to outbid ESPN in participation agreements for college football bowl games and other college football events. After review of the information at issue and consideration of the arguments, we find the Big 12, and ESPN have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

conclude the university may withhold Exhibit C under section 552.104(a) of the Government Code.²

In summary, Exhibit B is not subject to the Act and the university is not required to release this information in response to the instant request for information. The university may withhold Exhibit C 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, 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 688966

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

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