



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2018

Mr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
208 East 10th Street, Suite 600
Austin, Texas 78701-2407

OR2018-00209

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# 689809 (File No. 17079.13).

Texas State University (the "university") received a request for all contractual agreements between the university and consumer banking partners. Some information has been released to the requestor. The university states release of the information at issue may implicate the proprietary interests of Wells Fargo Bank, N.A. ("Wells Fargo") and Texas Regional Bank ("TRB"). You state the university notified these third parties of its receipt of the request for information and of their rights to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 TRB. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note in a letter dated November 6, 2017, the university states Attachment B-1 is not responsive to the instant request for information because it does not relate to a consumer banking agreement. This ruling does not address the public availability of non-

responsive information, and the university is not required to release non-responsive information in response to this request.

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 only received comments from TRB explaining why the information at issue should not be released. Therefore, we have no basis to conclude Wells Fargo 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 the information in Attachment B-2 on the basis of any proprietary interests Wells Fargo may have in the information.

TRB objects to the release of some of its information under section 552.104(a) of the Government Code. 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). 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. TRB asserts it has competitors. Further, TRB explains release of information it indicated would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find TRB has established the release of the information it indicated would give an advantage to a competitor or bidder. Accordingly, we conclude the university may withhold the information in Attachment C we have marked under section 552.104(a) of the Government Code.¹ As no other exceptions are raised for the remaining responsive information, it must be released.

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/>

¹As our ruling is dispositive, we need not consider TRB's remaining argument against disclosure of this 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,



James M. Graham
Attorney
Open Records Division

JMG/eb

Ref: ID# 689809

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)