



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2018

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2018-01796

Dear Ms. Burnett:

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# 693248 (OGC# 177719).

The University of Texas System (the "system") received a request for information pertaining to a specified agreement.¹ Although the system takes no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Oracle America, Inc. ("Oracle"). Accordingly, you state, and provide documentation showing, the system notified Oracle of the request and its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision

¹We 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 Oracle. We have considered the submitted arguments and reviewed the submitted information.

Oracle 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 exempts 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). A private third party may invoke this exception. *Boeing*, 466 S.W.3d at 831. Oracle states it has competitors. Oracle also states the information it seeks to withhold, if released, would give a competitor an advantage in the general marketplace and in submitting future competitive bids.

After review of the information at issue and consideration of the arguments, we find Oracle has established the release of the information it indicated would give an advantage to a competitor or bidder. Accordingly, we conclude the system may withhold the information we marked under section 552.104(a) of the Government Code.

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the system may withhold the information we marked under section 552.104(a) of the Government Code. The system must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

A handwritten signature in black ink that reads "James M. Graham". The signature is written in a cursive style with a large initial "J" and "G".

James M. Graham
Attorney
Open Records Division

JMG/eb

Ref: ID# 693248

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)