



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2018

Mr. Eric D. Bentley
Associate General Counsel
University of Houston
311 East Cullen Building
Houston, Texas 77204-2028

OR2018-02315

Dear Mr. Bentley:

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# 693648.

The University of Houston (the "university") received a request for three specified contracts. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of Mr. Tilman Fertitta ("Mr. Fertitta"), Texas Dow Employees Credit Union ("TDECU"), and The O'Quinn Foundation (the "foundation"). You further state the university notified these third parties of its receipt of the request for information and of their right 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 Mr. Fertitta and TDECU. We have also received and considered arguments 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). We have reviewed the submitted information and considered the submitted arguments.

Initially, we address the requestor's claim the university failed to comply with section 552.301 of the Government Code in requesting a ruling from this office. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office

and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). In this instance, the university received the original request for information on October 10, 2017. Thus, the university's ten-business-day deadline for the original request for information under section 552.301(b) was October 24, 2017. We note the university sought clarification of the request on October 24, 2017. The university states, and provides documentation showing, it received a response to its request for clarification on November 6, 2017. *See id.* § 552.222 (providing if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding 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). Thus, November 6, 2017, is the date on which the university is deemed to have received the request for information. Accordingly, the university's ten-business-day deadline under section 552.301(b) was November 20, 2017. The date in which this office received the information under section 552.301(b) submitted by the university was November 20, 2017. Therefore, we conclude the university complied with its procedural requirements mandated by section 552.301(b) of the Government Code. Accordingly, we will address the submitted arguments to withhold the information at issue.

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 ruling, we have not received comments from the foundation explaining why the submitted information should not be released. Therefore, we have no basis to conclude the foundation has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 submitted information on the basis of any proprietary interest the foundation may have in the 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). 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. Mr. Fertitta and TDECU state they have competitors. Mr. Fertitta states the

information at issue “constitutes an ongoing negotiation” and release of its information “would give advantage to the other parties to those negotiations.” TDECU states release of the information at issue would give competitors “a competitive advantage in the bidding process.” Further, the university represents the information it marked pertains to a recurring, competitive bidding situation. The university states current and potential donors “could adjust their position to the detriment of the university” and “advantage these donors at the harm of the university.” After review of the information at issue and consideration of the arguments, we find Mr. Fertitta, TDECU, and the university have established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the university may withhold the information you marked and the additional information we marked under section 552.104(a) of the Government Code. As no further arguments against disclosure have been raised, the university must release the remaining 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,



James M. Graham
Attorney
Open Records Division

JMG/eb

Ref: ID# 693648

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)