



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 14, 2019

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
210 West Seventh Street  
Austin, Texas 78701-2902

OR2019-01096

Dear Ms. Tynan:

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# 745959 (OGC# 185673).

The University of Texas at Austin (the "university") received a request for a specified bid tabulation. Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of ETA Hand2Mind; School Specialty, Inc.; SHI/Government Solutions, Inc.; Vernier Software & Technology; and VWR Funding, Inc. ("VWR"). Accordingly, you state the university notified the third parties of the request for information and of their 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 received comments from VWR. We have considered VWR's arguments and reviewed the submitted information.

Initially, we note 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) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining notified third parties. Thus, we have no basis for concluding the submitted information constitutes proprietary information of these third parties. *See* 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, 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 interests the remaining third parties may have in it.

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). 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. VWR states it has competitors. In addition, VWR states release of its pricing information would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find VWR has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the university may withhold the information we marked under section 552.104(a) of the Government Code.<sup>1</sup> As we received no arguments against disclosure for the remaining information, 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](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/gw

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<sup>1</sup>As our ruling is dispositive, we need not address VWR’s remaining arguments against disclosure of this information.

Ref: ID# 745959

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 5 Third Parties  
(w/o enclosures)