



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 15, 2019

Ms. Ana Vieira Ayala
Assistant General Counsel &
Public Information Coordinator
The University of Texas System
210 West Seventh Street
Austin, Texas 78701-2901

OR2019-04489

Dear Ms. Ayala:

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# 750583 (ORR# 186191).

The University of Texas at Austin (the "university") received a request for contracts granting media rights to Fox Sports Southwest ("FSSW") and NFHS Network. The university states it is releasing some of the requested information in accordance with the previous determinations issued in Open Records Letter Nos. 2016-08306 (2016) and 2016-15242 (2016). *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Although the university takes no position as to whether the submitted information is excepted under the Act, the university states release of the submitted information may implicate the proprietary interests of FSSW; Sports In Action, L.L.C., d/b/a Highfield Marketing, L.L.C. ("HFM"); and 2080 Media Inc. d/b/a

PlayON! Sports (collectively, the “third parties”). Accordingly, the university states, and provides documentation showing, it notified the third parties of the request for information and of the 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 third parties.¹ We have reviewed the submitted arguments and the submitted 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. The third parties state they have competitors. The third parties also state release of the information at issue would give advantage to their competitors. For many years, this office concluded the terms of a contract are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). However, now, pursuant to *Boeing*, section 552.104 is not limited only to ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find the third parties have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted information under section 552.104(a) of the Government Code.

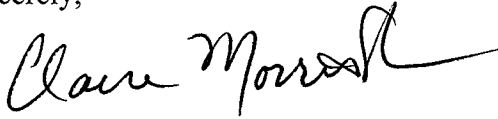
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹In its comments to this office, HFM informs is it argues against release of the information at issue on behalf of all of the third parties.

[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, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 750583

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 3 Third Parties
(w/o enclosures)