



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 22, 2019

Ms. Cecilia Alvarez  
Assistant General Counsel  
The University of Houston System  
Ezekiel W. Cullen Building  
4302 University Drive, Room 311  
Houston, Texas 77204-2028

OR2019-05139

Dear Ms. Alvarez:

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# 751445.

The University of Houston (the "university") received a request for information pertaining to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Tellepsen Builders, L.P. ("Tellepsen") and Vaughn Construction ("Vaughn"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their 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 Tellepsen and Vaughn. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note Tellepsen argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the university has submitted to us for our review. *See Gov't Code § 552.301(e)(1)(D)* (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the university submitted as responsive to the request for information.

Vaughn seeks to withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find Vaughn has failed to demonstrate the remaining information it indicated is highly intimate or embarrassing and of no legitimate public interest. Thus, the university may not withhold the remaining information at issue under section 552.101 in conjunction with common-law privacy.

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. Tellepsen and Vaughn state they have competitors. In addition, Tellepsen and Vaughn state release of the information at issue would cause competitive harm. After review of the information at issue and consideration of the arguments, we find Tellepsen and Vaughn 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 information we marked under section 552.104(a) of the Government Code.<sup>1</sup>

In summary, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university may withhold the information we marked under section 552.104(a) of the Government Code. The university must release the remaining information.

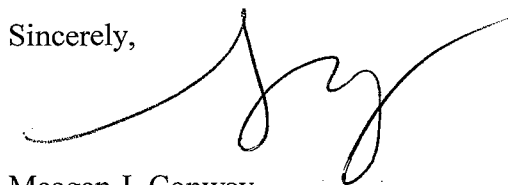
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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue

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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MC/gw

Ref: ID# 751445

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 2 Third Parties  
(w/o enclosures)