



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2019

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

OR2019-05873

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# 753067.

The University of Houston (the "university") received two requests from different requestors for certain information pertaining to a specified request for proposals.¹ You state you have made some information available to the first requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Capture-It Unlimited, Inc. ("Unlimited") And Visual Communication Services ("Visual"). Accordingly, you state, and provide documentation showing, you notified Unlimited and Visual 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 have considered the exception you claim and reviewed the submitted information.

¹We note the university sought and received clarification of the information requested by the second requestor. *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 when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Initially, we note the requestors ask the university to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the university has made a good-faith effort to do so.

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). 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). You represent the submitted information pertains to a competitive bidding situation. In addition, you state release of the submitted information “could allow current bidders the competitive opportunity to improve their negotiation positions at the expense of the [u]niversity . . . which could result in the [u]niversity entering into a contract for a higher price than it would have otherwise received.” After review of the information at issue and consideration of the arguments, we find the university has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude 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/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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/mo

Ref: ID# 753067

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)