



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 20, 2019

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2019-07792

Dear Ms. Burnett:

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# 755531 (OGC# 186585).

The University of Texas at El Paso (the "university") received a request for information pertaining to a specified event. You state the university will release most of the responsive information to the requestor. You state the university will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed 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). The "test under section 552.104 is whether knowing another bidder's [or competitor's

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

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 state the submitted information relates to the Magoffin Auditorium (the “auditorium”) and the Fox Fine Arts Recital Hall (the “hall”), which “are operated as revenue generating special use facilities.” Additionally, you state “[i]n order for the [a]uditorium and [h]all to generate revenue on behalf of the [u]niversity, the [u]niversity must contract with customers and vendors on a continuous year-round basis.” Further, you state the university has specific marketplace interests in the information at issue because it “competes with other local governmental and private entities that operate other special use facilities for the same types of events[.]” You assert release of the submitted information “would hamper the [u]niversity’s ability to enter into future agreements” by revealing the university’s rental rates and negotiating strategy. 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 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/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,



Blake Brennan
Attorney
Open Records Division

BB/eb

Ref: ID# 755531

Enc: Submitted documents

c: Requestor
(w/o enclosures)