



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2019

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

OR2019-08270

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# 756247.

The University of Houston (the "university") received a request for information related to a request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of ALTIUS Graphics; GraphTec, Inc. ("GraphTec"); HWI Capital LLC, d/b/a Signarama; and Sign-Ups and Banners. 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 GraphTec. We have reviewed the submitted information and the submitted arguments.

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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; 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, that release of requested information would cause 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 interest the remaining third parties may have in the information.

Section 552.104(a) 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. GraphTec states it has competitors. In addition, GraphTec states release of its information would provide an advantage to its competitors. After review of the submitted information and consideration of the arguments, we find GraphTec has established the release of the information it has indicated 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.¹ 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, 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,



Emily Buchanan
Attorney
Open Records Division

EB/jxd

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Ref: ID# 756247

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)