



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2019

Ms. Julie A. Masek
Assistant General Counsel
Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840

OR2019-13631

Dear Ms. Masek:

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# 766833 (Ref. No. C000480-030419).

Texas A&M University System (the "system") received a request for proposals submitted in response to a particular request for proposals, excluding the proposal submitted by the requestor's company, as well as scoring information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state you notified Alliance Work Partners, ComPsych, and FEI Behavioral Health ("FEI") 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 FEI. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the system has only submitted the requested proposals. To the extent information responsive to the portion of the request seeking evaluation materials existed on the date the system received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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 that is now closed. However, you inform us the system is currently soliciting bids for the same or similar services, and does so on a recurring basis. In addition, you assert release of the information at issue would “negatively affect the [system’s] ability to secure the most favorable terms.” After review of the information at issue and consideration of the arguments, we find the system has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/mo

Ref: ID# 766833

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address FEI’s arguments against disclosure of this information.