



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 23, 2019

Mr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
601 Colorado Street
Austin, Texas 78701-2904

OR2019-13758

Dear Mr. Gomez:

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# 767300.

Lamar University (the "university") received a request for information pertaining to a specified request for proposals.¹ You state the university has released some information. 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 Construction Managers of Southeast Texas, L.L.C. ("Construction Managers"). Accordingly, you state, and provide documentation showing, you notified Construction Managers of the request for information and of its 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 Construction Managers. We have considered the submitted arguments and reviewed the submitted information.

¹The university states it sought and received clarification of the information requested. *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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

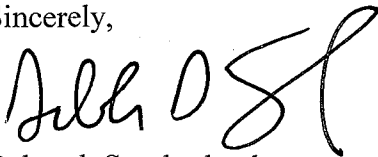
Initially we note, and you acknowledge in a letter dated March 26, 2019, the requestor withdrew the portion of her request relating to the proposals received by the university from N&T Construction, Inc. and Teal Construction Company. Thus, information related to these two third parties is non-responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the university is not required to release such information in response to the request.

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. Construction Managers states it has competitors. In addition, Construction Managers states release of the information at issue would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Construction Managers has established the release of the information at issue, which we marked, 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.² The university must release the remaining responsive 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,



Deborah Southerland
Attorney
Open Records Division

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²As our ruling is dispositive, we need not address the remaining argument against disclosure of the information at issue.

Ref: ID# 767300

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)