



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 13, 2019

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

OR2019-15875

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# 770435 (OGC Nos. 189803, 189823, 189824, and 189825).

The University of Texas at El Paso (the "university") received four requests from different requestors for information pertaining to a specified contract, including pricing information and information regarding a specified invitation for bids. The university claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the university states release of the submitted information may implicate the proprietary interests of the following: C&R Distributing LLC ("C&R"); Gold Star Petroleum, Inc.; Petroleum Traders; and Rio Valley Biofuels. Accordingly, the university states, and provides documentation showing, it notified these interested third parties of the request for information and of their right to submit arguments to this office. *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 C&R. We have considered the submitted arguments 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 information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). The university represents the submitted information pertains to an ongoing competitive bidding situation for similar services in

which a contract has not been awarded. In addition, the university states release of the submitted information “would provide bidders with unfair insight into the qualifications, reputations, and experience of the current provider, placing the [u]niversity at a competitive disadvantage.” Further, the university states release of the information at issue “would impair the [u]niversity’s efforts at procuring and negotiating a contract for the services at issue.” 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. Accordingly, we conclude the university may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

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](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,



James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/mo

Ref: ID# 770435

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)

cc: 4 Third Parties  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.