



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2019

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

OR2019-17762

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# 772366 (UT OGC# 189971).

The University of Texas at Austin (the "university") received a request for a specified contract with a named performer. 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 IMG College, LLC/Longhorn IMG Sports Marketing ("IMG"). Accordingly, the university states, and provides documentation showing, it notified IMG 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 considered the university's claimed exception and reviewed the submitted information.

Initially, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from IMG explaining why the submitted information should not be released. Therefore, we

have no basis to conclude IMG has a protected proprietary interest in the submitted information, and the university may not withhold any portion of it on that basis. *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 that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

At the time the request was received, the submitted information was subject to section 2261.253 of the Government Code. Section 2261.253 provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

...

(e) A state agency that posts a contract on its Internet website as required under this section shall redact from the posted contract

...

(2) information the attorney general determines is excepted from public disclosure under [the Act]; and

...

(f) The redaction of information under Subsection (e) does not exempt the information from the requirements of Section 552.021 or 552.221.

Gov't Code § 2261.253(a)(1), (e)(2), (f). Pursuant to subsection 2261.253(e)(2), we will address the university's claim under section 552.104 for 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 (Tex. 2015). The university states the submitted

information relates to the university's Longhorn City Limits concert series, which "has become an integral part of the game day experience at [the university]." Additionally, the university states it has specific marketplace interests in the information at issue because, "[t]o secure talent for these concerts, the [u]niversity must contract with performers and compete with the numerous other local governmental and private entities that host live music performances." The university asserts release of the submitted information "would enable [the university's] competitors to undercut the [u]niversity's negotiating position and offer better contract terms to performers with whom the [u]niversity seeks to contract," and "hamper the [u]niversity's ability to enter into future agreements that maximize the potential benefit to the [u]niversity."

The university seeks to withhold the entirety of the submitted information under section 552.104. However, subsection 2261.253(e) of the Government Code states, in relevant part, "[a] state agency that *posts a contract on its Internet website as required under* [section 2261.253] shall redact [information the attorney general determines is excepted from public disclosure] *from the posted contract[.]*" See Gov't Code § 2261.253(e) (emphasis added). Interpreting subsection 2261.253(e) to allow a state agency to withhold the entirety of a contract that the legislature, in the same section, expressly requires the state agency to post on its internet website is absurd and not consistent with the unambiguous language used by the legislature. Pursuant to the plain language of this subsection, a state agency may not withhold the entirety of a contract subject to section 2261.253. See *Hernandez v. Ebrom*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). See also Sen. Comm. on Finance, Bill Analysis, Tex. S.B. 20, 84th Leg., R.S. (2015) ("The purpose of this bill is to reform state agency contracting by clarifying accountability, increasing transparency, and ensuring a fair competitive process."). Accordingly, the university may not withhold the entirety of the submitted information under section 552.104 of the Government Code.

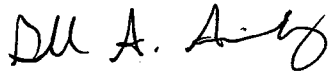
However, after review of the submitted information and consideration of the university's arguments, we find the university has established the release of the information we marked would give advantage to competitors of the university. Thus, we conclude the university may withhold the information we marked under section 552.104(a) of the Government Code. 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 772366

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)