



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 9, 2019

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
University of Texas System
210 West Seventh Street
Austin, Texas 78701-2901

OR2019-18570

Dear Ms. Tynan:

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# 774112 (OGC# 150206).

The University of Texas at Austin (the "university") received a request for information pertaining to football contracts and settlement agreements.¹ You state you are relying on Open Records Letter Nos. 2019-03703 (2019) and 2019-09022 (2019) with respect to some of the requested information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You state the release of the remaining submitted information may implicate the proprietary interests of IMG College, LLC ("IMG"). Accordingly, the university states, and provides documentation showing, it notified IMG of the request for information and of the right to submit arguments to this office as to why the submitted

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).

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 IMG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note IMG argues against the release of information that was not submitted by the university. This ruling does not address information that was not submitted by the university and is limited to the information the university has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

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). 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). IMG states it has competitors and release of its information would cause the company competitive and economic harm. In addition, you state the university has specific marketplace interests in the remaining information because "the [u]niversity competes with other schools with big teams for football games and is thus, a competitor in this marketplace." Further, you state release of the information at issue would "allow [the university's] competitors to undercut the [u]niversity's negotiation position" and, thus, "hamper the [u]niversity's ability to enter into future agreements[.]" After review of the information at issue and consideration of the arguments, we find IMG and the university have established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the submitted information under section 552.104(a) of the Government Code.²

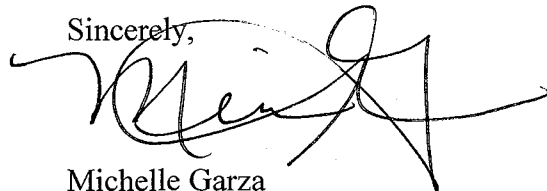
The university also asks this office to issue a previous determination that would permit it to withhold information under section 552.104 of the Government Code without requesting a ruling from this office. ORD 673. We decline to issue such a previous determination at this time. Accordingly, this letter 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

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

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Garza", written over a horizontal line.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/gw

Ref: ID# 774112

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)