



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2019

Ms. Claudene Marshall
Assistant General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2019-26288

Dear Ms. Marshall:

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# 786781 (ORR# C001421-070319).

The Texas A&M University System (the "system") received a request for evaluation documents, proposal responses, oral presentation materials from the awarded vendor, and the final executed contract, including best and final offer, pertaining to a specified request for proposals. Although the system takes no position regarding whether the submitted information is excepted from disclosure under the Act, the system informs us its release may implicate the proprietary interests of Deloitte Consulting, LLP ("Deloitte"). Accordingly, the system states, and provides documentation showing, it notified Deloitte of the request for information and of its 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 Deloitte. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-25184 (2019). In that ruling, we determined (1) the system may withhold ExperSolve's

information we marked under section 552.104(a) of the Government Code, and (2) the system must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. You state the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the system must continue to rely on Open Records Letter No. 2019-25184 as a previous determination and withhold or release the information at issue in accordance with that ruling. *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).

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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, 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. Deloitte states it has competitors. In addition, Deloitte explains release of the information at issue would provide an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Deloitte has established the release of the information at issue would give an advantage to a competitor or bidder. Accordingly, we conclude the system may withhold the information we indicated under section 552.104(a) of the Government Code.¹

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the system must continue to rely on Open Records Letter No. 2019-25184 as a previous determination and withhold or release the information at issue in accordance with that ruling. The system may withhold the information we indicated under section 552.104(a) of the Government Code. The system must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

¹ As our ruling is dispositive, we need not address Deloitte’s remaining arguments against disclosure of this 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Emily Buchanan
Assistant Attorney General
Open Records Division

EBO/gw

Ref: ID# 786781

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)