



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2019

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

OR2019-26519

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# 787310 (Reference No. 19053.6).

Texas State University (the "university") received a request for all proposals submitted in response to a specified request for qualifications. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of several third parties.<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 BOKA, KSQ, Kirksey, and Stantec. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>The third parties notified pursuant to section 552.305 are: Barnes Gromatzky Kosarek Architects; BOKA Powell, Inc. ("BOKA"); EYP, Inc.; HKS Inc.; KSQ Architects, P.C. ("KSQ"); Kirksey Architecture ("Kirksey"); Lord Aeck Sargent; Marmon Mok, Inc.; Page Southerland Page, Inc.; Pfluger Associates, L.P.; Randall Scott Architects, Inc.; Shepley Bulfinch Richardson & Abbot, Inc.; Stantec Architecture, Inc. ("Stantec"); and STG Design, Inc.

Initially, we note KSQ seeks to withhold information the university did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the university.<sup>2</sup> *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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) of the Government Code 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 the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests in the submitted information. *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. Accordingly, the university may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.104(a) of the Government Code exempts 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. BOKA, Kirksey, and Stantec state they have competitors. In addition, BOKA, Kirksey, and Stantec state the information at issue, if released, would give a competitor an advantage in submitting future competitive bids. After review of the information at issue and consideration of the arguments, we find BOKA, Kirksey, and Stantec have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold BOKA, Kirksey, and Stantec's information in its entirety under section 552.104(a) of the Government Code.<sup>3</sup> 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.

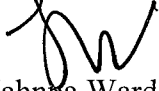
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<sup>2</sup>As we are able to make this determination, we need not address the KSQ's argument against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,



Jahnnia Ward  
Assistant Attorney General  
Open Records Division

JW/mo

Ref: ID# 787310

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

14 Third Parties  
(w/o enclosures)