



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2019

Mr. Fernando C. Gomez, J.D., Ph.D.
Vice Chancellor and General Counsel
The Texas State University System
601 Colorado Street
Austin, Texas 78701-2904

OR2019-27994

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# 789657.

Lamar University (the "university") received a request for the bid tabulation and awarded vendor proposal related to a specified contract. You state you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Southeast Texas Drywall, LLC ("Southeast"). Accordingly, you state, and provide documentation showing, you notified Southeast 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 received comments from a representative of Southeast. 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). 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. Southeast states it has competitors. In addition, Southeast states release of its information would cause competitive harm. After review of the information at issue and consideration of the arguments, we find Southeast has 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.¹

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/be

Ref: ID# 789657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure.