



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2019

Ms. Jennifer Burnett
University of Texas System
Office of General Counsel
210 West Seventh Street
Austin, Texas 78701-2901

OR2019-28896

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# 792538 (ORR# 192248).

The University of Texas at Arlington (the "university") received a request for information related to request for proposals number 2018-010. 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 Breakthrough Communications ("Breakthrough"). Accordingly, the university states, and provides documentation showing, it notified Breakthrough of the request for information and of the 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 Breakthrough. We have reviewed the submitted arguments and 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 represents the information at issue pertains to a competitive bidding situation in which a winning bidder has been chosen but a contract has not been executed. Thus, the university states release of the requested

information would put the university at a competitive disadvantage. After review of the information at issue and consideration of the arguments, we find the university has established the release of the 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 792538

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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