



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2019

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

OR2019-32763

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# 797732 (Reference# 19060.46).

Texas State University (the "university") received a request for information pertaining to request for proposal 754-TXST-2019-RFP-180-SHC. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of CHG Medical Staffing, Inc.; Interim Physicians; Jackson and Coker Locum Tenens ("J&C"), LLC; Pedico Staffing; Physician Resources, Inc. ("PRI"); StaffCare, Inc. ("StaffCare"); Tusk Enterprises, LLC; and Vista Staffing Solutions, Inc. Accordingly, you state, and provide documentation showing, you notified these 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 J&C, PRI, and StaffCare. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent “[a]lthough preliminary decisions have been made regarding the companies that will be awarded contracts for this proposal, negotiations are ongoing regarding the terms and conditions of those contracts.” Additionally, you state “[a]s final contracts have not been executed for the project at issue, release of the requested records at this time would harm the [u]niversity’s interest in negotiating these contracts[.]” After review of the information at issue and consideration of the arguments, we find the university has established the release of the information at issue 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

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KM/mo

Ref: ID# 797732

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.