



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 22, 2019

Ms. Cynthia Tynan
Assistant General Counsel & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-33181

Dear Ms. Tynan:

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# 798040 (OGC# 192849).

The University of Texas Health Science Center at San Antonio (the "university") received a request for information related to request for proposals number 745-18-P36 for Temporary Medical Staffing Services. You state the university released some information to the requestor. You also state release of the submitted information may implicate the proprietary interests of Acadia Workforce; AMER Technology ("AMER"); Diskriter; InGenesis; Judge Technical Service; MedRelief; and Officeworks. 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 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 received comments from AMER. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2019-25926 (2019) and 2018-28928 (2018). In Open Records Letter No. 2019-25926, we concluded the university may not withhold any of the submitted information on the basis of any proprietary interest AMER may have in the information, but must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, and must release the remaining information. In Open Records Letter No. 2018-28928, we concluded the university may not withhold any of the submitted

information on the basis of any proprietary interest AMER may have in the information and must release the submitted information. We note AMER seeks to withhold portions of its information under section 552.104 of the Government Code. We further note some of the information at issue may have been previously ordered released in Open Records Letter Nos. 2019-25926 and 2018-28928. Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the university may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although AMER raises section 552.104 of the Government Code for its information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the university may not now withhold any of AMER's previously released information under section 552.104 of the Government Code. However, with regard to the submitted information that was not previously released, there is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, we conclude the university must continue to rely on Open Records Letter Nos. 2019-25926 and 2018-28928 as previous determinations and withhold the identical information that was not previously released in accordance with those rulings. *See* ORD 673. With respect to the information that was not at issue in the previous rulings, we will consider AMER's argument under section 552.104 of the Government Code.

Next, 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have a protected proprietary interest 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

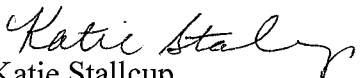
AMER asserts some of the submitted information is excepted from public disclosure under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may 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. AMER states it has competitors. In addition, AMER states release of the information at issue would cause harm. Upon review, we find AMER has established the release of the information at issue would give advantage to a competitor or bidder. Thus, to the extent the information was not previously ordered released in Open Records Letter Nos. 2019-25926 and 2018-28928, we conclude the university may withhold the information at issue under section 552.104(a) of the Government Code. The university must release the remaining information.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,


Katie Stallcup
Attorney
Open Records Division

AKS/eb

Ref: ID# 798040

Enc. Submitted documents

c: Requestor
(w/o enclosures)

7 Third Parties
(w/o enclosures)

¹ We note the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).