



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2020

Ms. Cynthia Tynan
Assistant General Counsel & Public Information Coordinator
University of Texas System
210 West Seventh Street
Austin, Texas 78701-2902

OR2020-02115

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# 807790 (ORR# 193373).

The University of Texas at Austin (the "university") received a request for the bid tabulation pertaining to a specified project. The university does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the university states, and provides documentation showing, it notified the following third parties of the university's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released: Bakergroup; Brailsford & Dunlavey, Inc. ("Brailsford"); Cini-Little International Inc.; and Envision Strategies. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 Brailsford objecting to the release of some of the information at issue. We have considered the submitted arguments and reviewed the submitted information.

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) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the remaining third parties has submitted to this office any reasons explaining why the requested information should not be released. Accordingly, we have no basis for concluding the submitted information constitutes proprietary information of these third parties, and the university may not withhold any portion of it on that basis. *See* 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 that information is trade secret), 542 at 3.

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, 841 (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.* Upon review, we find Brailsford has not established release of any of its information would give an advantage to a competitor. Therefore, the university may not withhold any of the submitted information under section 552.104 on that ground. Accordingly, the university must release the submitted 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.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 807790

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)