



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2020

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2020-07036

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# 812456 (OGC# 193777).

The University of Texas at Austin (the "university") received a request for certain employment information pertaining to five named employees, contracts for ten specified non-conference men's basketball games, and contracts for ten specified non-conference women's basketball games. You state the university will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information consists of contracts relating to the expenditure of funds by the university that are subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under section 552.104 of the Government Code. We note some information encompassed by section 552.022 may be withheld under section 552.104. *See id.* § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). However, we note section 552.104(c) of the Government provides “[s]ubsection (b) does not apply to information described by [s]ection 552.022(a) relating to the receipt or expenditure of public or other funds by a governmental body for a parade, concert, or other entertainment event paid for in whole or part with public funds.” Section 552.104(c) applies to a request for information received after the effective date of the enacting legislation and a contract entered into or renewed on or after the effective date of the enacting legislation. Act of May 6, 2019, 86th Leg., R.S., H.B. 81, § 2. The effective date of the legislation enacting section 552.104(c) is May 17, 2019. *See id.* 2019 H.J. of Tex., 86th Leg. R.S. 4236. Accordingly, we find the submitted contracts entered into on or after May 17, 2019, may not be withheld under section 552.104 of the Government Code. However, we will consider your argument under section 552.104 for the submitted contracts entered into before May 17, 2019.

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). You state “[i]n order for the [university’s] . . . basketball program to generate revenue on behalf of the [u]niversity, the [u]niversity must contract with other schools for basketball games.” You state the university has specific marketplace interests in the information at issue because “the [u]niversity competes with other universities for these agreements and is, therefore, a competitor in this marketplace.” In addition, you state release of the information at issue would “allow [the university’s] competitors to undercut its negotiating position[,]” and thus, release of the information would “hamper the [u]niversity’s ability to enter into future agreements[.]” For many years, this office concluded the terms of a contract, and especially the pricing of a winning bidder, are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find you have established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the

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university may withhold the submitted contracts entered into before May 17, 2019, which we indicated, under section 552.104(a) of the Government Code. As you raise no further exceptions to disclosure, the university must release the remaining information pursuant to section 552.022(a)(3) of the Government Code.

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 812456

Enc. Submitted documents

c: Requestor
(w/o enclosures)