



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2020

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

OR2020-10484

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# 820715 (OGC# 194683).

The University of Texas Southwestern Medical Center (the "university") received a request for specified portions of proposals submitted in response to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of The Ahmuty Corporation d/b/a Commercial Interiors; GCC Enterprises, Inc.; GFC Contracting; McGough Construction; SDB Contracting Services; Structure Tone Southwest; Vaughn Construction ("Vaughn"); and Whiting-Turner Contracting Company. Accordingly, you state, and provide documentation showing, the university notified these third parties 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 Vaughn. We have reviewed the submitted arguments and the submitted information.

Initially, we note Vaughn argues against the release of information that was not submitted by the university. This ruling does not address information that was not submitted by the

university and is limited to the information the university has submitted for our review.¹ *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties has 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, that 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. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.1101 of the Government Code provides, in relevant part:

- (a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

- (A) work;
- (B) organizational structure;
- (C) staffing;
- (D) internal operations;
- (E) processes; or
- (F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

¹ As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

(2) give advantage to a competitor.

Gov't Code § 552.1101(a). Vaughn asserts disclosure of some of its information would reveal its individual approach to its organizational structure and staffing and give advantage to competitors. Upon review, we find Vaughn has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the university must withhold the information we marked under section 552.1101 of the Government Code. However, we find Vaughn has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the university may not withhold it on that basis. The university must release the remaining 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/be

Ref: ID# 820715

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)