



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2020

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

OR2020-12445

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# 822640 (OGC# 194312).

The University of Texas System (the "system") received a request for information involving certain entities pertaining to a specified project for a specified time period.¹ Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Austin Arena Company, LLC, and Oak View Group, LLC (collectively, "OVG"), as well as Truist Bank ("Truist"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request and their right to submit arguments to this office. *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 OVG and Truist, as well as Live Nation Entertainment, Inc.² ("Live Nation"). We have considered the submitted arguments and reviewed the submitted information.

¹ You state, and provide documentation demonstrating, you sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

² We note, although Live Nation raises section 552.101 of the Government Code, it makes no argument to support this exception. Therefore, we presume Live Nation has withdrawn its claim this exception applies to the submitted information.

Initially, Truist argues its information is not responsive to the request for information. However, the Act requires a governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because you have submitted the information at issue for our review, we find the system has made a good-faith effort to submit information that is responsive to the request, and we will address the arguments against disclosure of this information.

Next, we note section 2261.253 of the Government Code provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The submitted Arena Services Agreement is between the system, a state agency, and OVG, a private vendor, for the purchase of goods or services. Further, the contract has neither expired nor been completed. Accordingly, we find the Arena Services Agreement is a contract described by section 2261.253.

OVG and Live Nation raise sections 552.110 and 552.1101 of the Government Code for portions of the Arena Services Agreement. Section 552.0222 of the Government Code provides, in relevant part:

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

(1) a contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section[.]

Id. § 552.0222(b)(1). As noted above, the Arena Services Agreement is a contract described by section 2261.253(a). Additionally, we have no indication any portion of the Arena Services Agreement was properly redacted under section 2261.253(e). Although OVG and Live Nation raise sections 552.110 and 552.1101, section 552.0222 expressly states these exceptions do not apply to a contract described by section 2261.253(a). Accordingly, we do not address OVG's or Live Nation's arguments against disclosure under these exceptions. As no other exceptions to disclosure have been raised, the system must release the submitted Arena Services Agreement.

OVG, Live Nation, and Truist each raise subsections 552.110(b) and (c) for portions of the remaining information. Section 552.110(b) of the Government Code states, "[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is

demonstrated based on specific factual evidence that the information is a trade secret.” *Id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Section 552.110(c) of the Government Code exempts from disclosure “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). OVG, Live Nation, and Truist argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find OVG, Live Nation, and Truist have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the system must withhold the information we marked and indicated under section 552.110(c).³ However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the bases of either section 552.110(b) or section 552.110(c).

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

- (a) Except as provided by Section 552.0222, information 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 exempted 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;

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(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

(2) give advantage to a competitor.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body[.]

Id. § 552.1101(a)-(b)(1). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Live Nation raises section 552.1101(a) for some of its remaining information. However, we find the remaining information at issue is subject to sections 552.0222(b) and 552.1101(b) and may not be withheld on the basis of section 552.1101(a). *See id.* §§ 552.0222(b), .1101(b). Therefore, the system may not withhold the remaining information at issue under section 552.1101(a).

In summary, the system must withhold the information we marked and indicated under section 552.110(c) of the Government Code. The system 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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LH/eb

Ref: ID# 822640

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)