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ATTORNEY GENERAL OF TEXAS

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OR2020-14966

Dear Ms. Tynan and 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# 830399 (OGC Nos. 195873 and 196270).

The University of Texas at Arlington (the "university") received two requests from different requestors for the university's contract with Academic Partnerships, LLC ("AP"), as well as corresponding amendments. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of AP. Accordingly, you state, and provide documentation demonstrating, the university notified AP of the requests for information and of its 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 AP. We have also received and considered comments submitted by the first requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we address the first requestor's assertion that some of the information at issue has previously been made available to the public. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at

1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *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). The first requestor asserts the university has previously released "contract information regarding [AP] to other entities[.]" However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. Upon review, we have no indication the information at issue has been previously released in its exact form to any members of the public. Accordingly, we find section 552.007 is inapplicable to the information at issue and we will address the arguments against its disclosure.

AP raises section 552.110 of the Government Code for their information at issue. Section 552.110(b) 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." *See* Gov't Code § 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 states:

Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

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). Upon review, we find AP has demonstrated portions of its information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we marked under section 552.110(c) of the Government Code.¹ However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Additionally, we conclude AP has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Further, we conclude AP has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the university may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code.

Section 552.1101(a) of the Government Code excepts from disclosure “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[.]*” *Id.* § 552.1101(a) (emphasis added). Additionally, we note section 552.1101(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.1101(b). Upon review, we find AP has failed to demonstrate the applicability of section 552.1101(a) to its remaining information. Therefore, the university may not withhold any portion of the remaining information under section 552.1101(a) of the Government Code.

In summary, the university must withhold the information we marked under section 552.110(c) of the Government Code. 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 830399

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: Third Party

(w/o enclosures)