



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2020

Ms. Cecilia M. Alvarez
Assistant General Counsel
University of Houston System
4302 University Drive, Room 311
Houston, Texas 77204-2028

OR2020-15898

Dear Ms. Alvarez:

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# 830214.

The University of Houston (the "university") received a request for three specified contracts. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, the university notified these third parties of the request for information and of their 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 one of the third parties (the "interested party"). We have also received comments from the 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.

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments

from one of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude either of the remaining third parties has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the university may not withhold any of the submitted information on the basis of any proprietary interest either of the remaining third parties may have in it.

Section 552.104(a) of the Government Code exempts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” 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, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the university has established the applicability of section 552.104 to the information at issue. Thus, we conclude the university may withhold the information you marked under section 552.104(a).¹ As no further exceptions to disclosure have been raised, 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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jlbm

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

Ref: ID# 830214

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)