



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 3, 2020

Mr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
601 Colorado Street
Austin, Texas 78701-2904

OR2020-22236

Dear Mr. Gomez:

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# 843168.

Lamar University (the "university") received a request for its current licensing agreement with Elsevier B.V. ("Elsevier"). 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 Elsevier. Accordingly, you state, and provide documentation showing, you notified Elsevier of the request 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 Elsevier. We have considered the submitted arguments and reviewed the submitted information.

Elsevier raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information 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) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has

amended section 552.104 since the issuance of *Boeing*. See Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code § 552.104(a). Therefore, we do not address Elsevier's arguments under section 552.104.

We note the submitted information consists of information that is subject to section 2261.253 of the Government Code. Section 2261.253(a) 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[.]

(b) A state agency monthly may post contracts described by Subsection (a) that are valued less than \$15,000.

Id. § 2261.253(a)(1), (b). The contract at issue is between the university, which is a state agency, and a private vendor for the purchase of services, and the contract is not expired or completed. Although Elsevier seeks to withhold portions of the submitted information under section 552.110 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the university may not withhold any portion of Elsevier's information under section 552.110 of the Government Code. Consequently, the university must release Elsevier's information in its entirety pursuant to section 2261.253 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/jm

Ref: ID# 843168

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)