



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2022

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2022-12120

Dear 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# 944615 (OGC# 204353).

The University of Texas System (the "university") received a request for four points of information pertaining to request for proposals number 721-2201. Although the university takes no position regarding whether the submitted information is excepted from disclosure under the Act, the university informs us its release may implicate the proprietary interests of the following third parties: ABM Education; AHI Facility Services; Atalian Global Services; Austin Cleaning Services; HES Facilities Management; Hospital Housekeeping Systems; Kellermeyer Bergensons Services, LLC ("KBS"); Pritchard Industries; Well Done Services; and UBM Enterprise. Accordingly, the university states, and provides documentation showing, it notified these third parties of the request for information and of 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 KBS. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) of the Government

Code 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 received comments from only KBS explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have 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). Therefore, the university may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

KBS asserts section 552.1101 of the Government Code for its information at issue.¹ Section 552.1101 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 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

(2) give advantage to a competitor.

Id. § 552.1101(a). 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). KBS

¹ Although KBS raises section 552.101 of the Government Code in conjunction with section 552.1101 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we do not address KBS's argument under section 552.101.

asserts disclosure of its information would reveal an individual approach to discounts, pricing methodology, cost data, or other pricing information that will be used in future solicitation or bid documents and give advantage to a competitor. Upon review, we find KBS 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(a). 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 552.1101(a). *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find KBS has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the university may not withhold any of the remaining information at issue under section 552.1101(a). As no other arguments against disclosure have been made, 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 944615

Enc. Submitted documents

c: Requestor
(w/o enclosures)

11 Third Parties
(w/o enclosures)