



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 25, 2022

Ms. Audra Gonzalez Welter
Assistant General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2022-15139

Dear Ms. Welter:

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# 949926 (OGC# 204575).

The University of Texas at San Antonio (the "university") received a request for information pertaining to a specified promotion agreement. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information is subject to section 2261.253 of the Government Code. Section 2261.253 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.

...

(e) A state agency that posts a contract on its Internet website as required under this section shall redact from the posted contract

...

(2) information the attorney general determines is excepted from public disclosure under [the Act.]

...

(f) The redaction of information under Subsection (e) does not exempt the information from the requirements of Section 552.021 or 552.221.

Gov't Code § 2261.253(a)(1), (b), (e)(2), (f). The submitted information consists of a contract between the university, which is a state agency, and a private vendor for the purchase of goods or services, and we have no indication the contract is expired or completed. The university raises section 552.104 of the Government Code for the submitted information; however, 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). The 85th Legislature amended section 2261.253; pursuant to the amendments, state agencies shall redact from contracts subject to section 2261.253 information that the attorney general determines is excepted from public disclosure under the Act. Gov't Code § 2261.253(e)(2); *see also id.* § 2261.253(f). The amendments “apply only in relation to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after [September 1, 2017].” Act of May 29, 2017, 85th Leg., R.S., ch. 556, § 17(c). Upon review, we find the contract is subject to the amendments; therefore, we will consider the university’s argument under section 552.104 of the Government Code for the submitted information.

Section 552.104(a) of the Government Code excepts 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).

The university seeks to withhold the entirety of the submitted information under section 552.104. However, subsection 2261.253(e) of the Government Code states, in relevant part, “[a] state agency that *posts a contract on its Internet website as required under* [section 2261.253] shall redact [information the attorney general determines is excepted from public

disclosure] *from* the *posted* contract[.]” See Gov’t Code § 2261.253(e) (emphasis added). Interpreting subsection 2261.253(e) to allow a state agency to withhold the entirety of a contract that the legislature, in the same section, expressly requires the state agency to post on its internet website is absurd and not consistent with the unambiguous language used by the legislature. Pursuant to the plain language of this subsection, a state agency may not withhold the entirety of a contract subject to section 2261.253. See *Hernandez v. Ebrom*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). See also Sen. Comm. on Finance, Bill Analysis, Tex. S.B. 20, 84th Leg., R.S. (2015) (“The purpose of this bill is to reform state agency contracting by clarifying accountability, increasing transparency, and ensuring a fair competitive process.”). Accordingly, the university may not withhold the entirety of the submitted information under section 552.104 of the Government Code. Further, after review of the information at issue and consideration of the arguments, we find the university has failed to demonstrate the applicability of section 552.104 to any portion of the submitted information. Thus, we conclude the university may not withhold the submitted information under section 552.104(a). The university must release the submitted 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,

Colin Henry
Attorney
Open Records Division

CEH/mo

Ref: ID# 949926

c: Requestor