



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 10, 2014

Ms. Ana Vieira  
Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2014-05990

Dear Ms. Vieira:

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# 519292 (UT OGC# 154139).

The University of Texas at El Paso (the "university") received a request for information pertaining to bids the university received for a specified project. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You further state the proprietary interests of Daktronics, Inc. ("Daktronics") might be implicated by the request. You notified the affected third party of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory-predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information

in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You inform us the submitted information is related to an RFP for certain services. You state releasing this information “would harm the [u]niversity’s ability to negotiate the best possible terms for the contract because bidders could contact each other and potentially influence the prices or transactions[.]” However, we note the university has submitted only one bid in response to the request for information. Thus, we find the university has not shown there is more than one “competitor” for the contract at issue. Upon review, we find the university has failed to demonstrate how the release of the submitted information would affect an ongoing competitive bidding situation. Therefore, the university has failed to demonstrate the applicability of section 552.104 of the Government Code to this information; as such, the university may not withhold it on that basis.

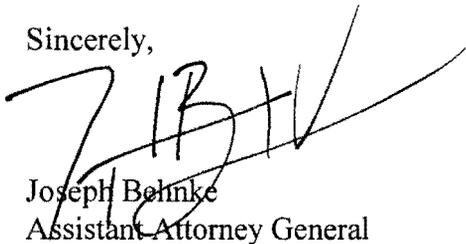
An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Daktronics. Thus, Daktronics has not demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)–(b); Open Records Decision Nos. 661 at 5–6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interests Daktronics may have in the information. As no further exceptions to disclosure have been raised, the university must release the requested 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'JBH', is written over the typed name and title of Joseph Behnke.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 519292

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Daktronics, Inc.  
201 Daktronics Drive  
Brookings South Dakota 57006-5128  
(w/o enclosures)