



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 17, 2015

Ms. Audra Gonzalez Welter  
Attorney & Public Information Coordinator  
University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2015-14570

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# 574207 (OGC# 161863).

The University of Texas System (the "system") received a request for all responses to RFP# COM2011-0520. The system claims the requested information is excepted from disclosure under section 552.104 of the Government Code. The system also states, and provides documentation showing, the system notified EthicsPoint, Inc., of the system's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 considered the claimed exception and reviewed the submitted information.

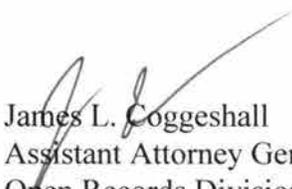
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at \* 9 (Tex. June 19, 2015). The system represents the submitted information pertains to a competitive bidding situation. In addition, the system states the submitted information is a proposal related to a prior request for proposals ("RFP") for the operation of an anonymous compliance system, and for which the requestor was awarded the contract. It also states the services go out for bid every five years and a 2016 version of the RFP will be issued around June of 2016. The system asserts

releasing the submitted information could impair its efforts at procuring and negotiating its future contract with the chosen vendor. It also argues, “[d]ue to the fact the future RFP and previous proposal are for the same services, vendors will likely submit pricing responses similar to the ones at issue” and “[r]elease of the pricing information would compromise the bidding process, potentially placing [the system] at a competitive disadvantage in the bid negotiations.” After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a).

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 574207

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. John Killalea  
EthicsPoint, Inc.  
6000 Meadows Road, Suite 200  
Lake Oswego, Oregon 97035  
(w/o enclosures)