



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2015

Mr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
601 University Drive, JCK 1040
San Marcos, Texas 78666-4684

OR2015-16950

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# 575748 (File No. 15032.18).

Texas State University (the "university") received two requests for the bid submitted by W. W. Grainger, Inc. ("Grainger") for a specified bid number. The university does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the university states, and provides documentation showing, it notified Grainger of the university's receipt of the request for information and of Grainger's 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). In correspondence to this office, Grainger asserts some of its information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the submitted arguments 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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 2015). 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." *Id.* at 9. Grainger states it has competitors. In addition, Grainger states release of the information it has marked would give advantage to a competitor or bidder. After review of the information at issue and consideration of the

arguments, we find Grainger has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the university may withhold the information Grainger has marked under section 552.104(a) of the Government Code.¹ 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 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# 575748

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Ms. Elizabeth Haldey
Counsel for W.W. Grainger, Inc.
Greenberg Traurig, LLP
306 West 6th Street, Suite 2050
Austin, Texas 78701
(w/o enclosures)

¹As our ruling is dispositive, we do not address the other arguments to withhold this information.